

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

John Doe,

Plaintiff,

v.

Carleton College,

Defendant.

Jury Trial Demand

VERIFIED COMPLAINT

Case No.:

Plaintiff John Doe¹ ("Plaintiff") as and for his Complaint against Carleton College respectfully alleges as follows:

THE NATURE OF THIS ACTION

1. John Doe seeks damages and injunctive relief from the unlawful actions taken and procedures employed by Defendant and its agents that resulted in the wrongful suspension and then expulsion of Plaintiff, then a sophomore. The suspension and expulsion were the result of a rigged and unfair disciplinary process put in place to rush to a pre-determined result and to minimize legal risk, with deliberate disregard for the consequences to Plaintiff, in violation of both state and federal law.

THE PARTIES

2. Plaintiff John Doe is of mixed race, and resides in the State of Washington. John Doe was a full-time student at Carleton College in Spring 2017.

¹ Plaintiff has filed a Motion to proceed pseudonymously.

3. Defendant Carleton College is a private, liberal arts college and a domestic non-profit corporation incorporated in Minnesota, with its principal place of business located at One North College Street, Northfield, MN 55057.

JURISDICTION AND VENUE

4. This Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 and under 28 U.S.C. § 1367 because: Plaintiff states claims arising under the Constitution and laws of the United States, including Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88; and the state law claims are so closely related to the federal law claims as to form the same case or controversy under Article III of the U.S. Constitution.
5. Plaintiff also invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.
6. This Court has personal jurisdiction over Defendant on the grounds that it is conducting business within the State of Minnesota.
7. Venue for this action properly lies in this district pursuant to 28 U.S.C. §1391 because Defendant is considered to reside in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL BACKGROUND

A. Carleton College

8. Defendant is a private university with a student population of approximately 2,100 undergraduate students.

9. During the 2016-2017 academic year, the United States Department of Education (“ED”) distributed billions of dollars to public and private colleges and universities for students attending their schools. Upon information and belief, Carleton College was a recipient of such federal funding.

B. Growing National and Federal Pressure to Hold Male Students Responsible for Sexually Assaulting Female Students

10. This case arises amidst a growing national controversy stemming from the Department of Education’s Office of Civil Rights (“OCR”) threats to withhold federal education dollars in order to compel colleges and universities to address so-called “sexual violence” on campuses.

11. OCR’s threatened withholding of federal funds puts great pressure on Defendant and other universities to treat male students accused of sexual misconduct with a presumption of guilt and to simply punish the male student in order to avoid jeopardizing the flow of taxpayer dollars, under the guise of making campuses safe for female students.

12. As detailed below, for years, Defendant and other universities were under federal scrutiny from the ED for alleged indifference to sexual violence on campus in violation of Title IX, and for violations of the Clery Act, which requires colleges to keep and disclose information about crime on and near their respective campuses. Title IX compliance is monitored in part by the ED which can impose civil penalties and can suspend institutions from participating in federal student aid programs.

13. Upon information and belief, Defendant’s violations of Plaintiff’s rights occurred in part because of threats by the federal government that universities could lose federal funding or

face other adverse consequences for not finding male students like Plaintiff responsible for sexually assaulting female students. Evidence of this pressure includes but is not limited to, the White House’s April 2014 report entitled “Not Alone”, which encouraged schools to combat sexual assault of women on campuses and warnings that if colleges do not adhere to Title IX they “risk[] losing federal funds” and/or face potential lawsuits filed by the Department of Justice.”²

C. Federal Statutory and Regulatory Requirements Concerning Allegations of Sexual Assault.

14. The issue of sexual assaults on college and university campuses is primarily addressed by an act of Congress known as Title IX of the Education Amendments of 1972, 20 U.S.C.

§§ 1681-1688. Title IX applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination on the basis of sex in a school’s “education program or activity,” which includes all of the school’s operations.³ A school specifically agrees, as a condition for receiving federal funds, to operate all of its programs and activities in accordance with Title IX and the Department of Education’s Title IX regulations. This agreement is known as an “assurance of compliance.”⁴ In this respect, Title IX is no different from other federal legislation that conditions the entitlement to federal funds on adherence to a federal regulatory scheme.

15. Defendant, as a recipient of federal funds, is bound by Title IX and its regulations, and, upon information and belief, has executed an assurance of compliance.

² See <https://www.notalone.gov/assets/report.pdf>.

³ 20 U.S.C. §§ 1681(a), 1687.

⁴ 34 C.F.R. § 106.4(a)-(c).

16. Since regulations were first promulgated under Title IX in 1972⁵, there has been a requirement that a school “adopt and publish grievance procedures providing for the prompt and equitable resolution of student . . . complaints alleging any action which would be prohibited by” Title IX or its regulations.⁶ Both the Department of Education and the Department of Justice have set forth this requirement by way of regulation.⁷ It has also long been recognized by “[t]he Supreme Court, Congress, and Federal executive departments and agencies . . . that sexual harassment of students can constitute discrimination prohibited by Title IX.”⁸ “Sexual Harassment” is broadly defined as “unwelcome conduct of a sexual nature” that includes sexual intercourse, sexual assault, and rape. Student-on-student sexual harassment is prohibited by Title IX, as are other forms of sexual harassment.⁹
17. The Office for Civil Rights (“OCR”) of the Department of Education investigates and administratively enforces Title IX as it relates to sexual harassment. In 2001, OCR promulgated regulations pursuant to notice-and-comment rulemaking¹⁰ in a document entitled “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” (“2001 Guidance”).¹¹ OCR issued these regulations to “continue[] to provide the principles that a school should use to recognize and

⁵ U.S. Dep’t of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties – Title IX* (2001) at 36 n.98 (notice of publication at 66 Fed. Reg. 5512 (January 19, 2001)) (“2001 Guidance”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

⁶ 34 C.F.R. § 106.8(b)

⁷ 34 C.F.R. § 106.8(b) (Dep’t of Education); 28 C.F.R. § 54.135(b) (Dep’t of Justice).

⁸ 2001 Guidance at 2 & n.3.

⁹ *Id.* at 2-3 & nn.2, 3, 6, 8, 20.

¹⁰ *Id.* at ii.

¹¹ *See* note 3 *supra*.

effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.”¹²

18. Title IX’s regulations, including the 2001 Guidance, have the force and effect of law, for they affect individual rights and obligations, and were the product of notice-and-comment rulemaking.

19. In the 2001 Guidance, OCR recognized that “procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience.”¹³ Nevertheless, OCR has identified a number of factors to be used in determining whether a school’s procedures satisfy the “prompt and equitable” requirement of the regulations.

20. First, in a section entitled “Due Process Rights of the Accused,” OCR states that the procedures must not only “ensure the Title IX rights of the complainant,” but must do so while “according due process to both parties involved.”¹⁴ This Title IX “due process” requirement applies to both state and private colleges and universities.¹⁵

21. The “prompt and equitable” procedures that a school is required to implement to “accord due process to both parties involved” must include, at a minimum: “Notice . . . of the procedure, including where complaints may be filed”; “Application of the procedure to complaints alleging [sexual] harassment . . .”; “Adequate, reliable, and impartial investigation of

¹² 2001 Guidance at i.

¹³ 2001 Guidance at 20.

¹⁴ Id. at 22.

¹⁵ Id. at 2, 22.

complaints, including the opportunity to present witnesses and other evidence”; “Designated and reasonably prompt timeframes for the major stages of the complaint process”; and “Notice to the parties of the outcome of the complaint”¹⁶

22. A school also has an obligation under Title IX to make sure that all employees involved in the conduct of the procedures have “adequate training as to what conduct constitutes sexual harassment,” which includes “alleged sexual assaults.”¹⁷

23. In April 2011, OCR issued a “significant guidance document” commonly referred to as the “Dear Colleague Letter.”¹⁸ The Letter reaffirmed the vitality of the 2001 Guidance while putting pressure on schools to find male students accused of sexual assault responsible. As set forth in the Letter, OCR states that compliance with Title IX requires the following:

- a. A school’s “Title IX coordinator [the official charged with compliance] should review the [school’s] disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.”¹⁹
- b. “Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence . . . , the school must promptly resume and complete its fact-finding for the Title IX investigation.”²⁰

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 21.

¹⁸ “Dear Colleague” Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleagues-201104.pdf>.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 10 (emphasis added) (footnote omitted).

- c. The complainant and the accused student “must have an equal opportunity to present relevant witnesses and other evidence.”²¹
- d. The complainant and the accused student “must be afforded similar and timely access to any information that will be used at the hearing. For example, a school should not conduct a pre-hearing meeting during which only the [complainant] is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the [accused student].”²²
- e. “Schools must maintain documentation of all proceedings, which may include written findings of fact, transcripts, or audio recordings.”²³
- f. “[S]chools [should] provide an appeals process.”²⁴
- g. “In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.”²⁵
- h. “If an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.”²⁶

D. 2011 Dear Colleague Letter and April 29, 2014 guidance question and answers rescinded, basis fairness to both accuser and accused required.

24. In September 2017, in response to concerns that prior guidelines had created a system that had gone too far and was treating the accused unfairly, the OCR issued a “significant guidance document” entitled “Q&A on Campus Sexual Misconduct.” That Q&A rescinded

²¹ *Id.* at 8.

²² *Id.* (emphasis added).

²³ *Id.* at 12 (emphasis added).

²⁴ *Id.*

²⁵ *Id.* (emphasis added).

²⁶ *Id.* (emphasis added).

the Dear Colleague letter and the Questions and Answers on Title IX Sexual Violence dated April 29, 2014, noting that the withdrawn documents “ignored notice and comment requirements, created a system that lacked basic elements of due process and failed to ensure fundamental fairness.”²⁷

25. The 2017 Q&A, while reaffirming the vitality of the 2001 and 2006 Guidance Documents, made notable changes from the guidance provided in the Dear Colleague Letter and the 2014 Q&A Guidance, including:

- a. Removing the requirement that findings of fact and conclusions must be reached by applying a preponderance of the evidence standard and allowing institutions to decide whether to apply the more likely than not preponderance standard or the highly probable clear and convincing evidence standard²⁸;
- b. Making it clear that the burden is on the institution, and not on either party, to gather sufficient evidence to reach a fair and impartial determination as to whether sexual misconduct has occurred²⁹; and
- c. Removing the 60-day deadline for adjudication of claims in favor of a prompt resolution of claims that afforded both parties fairness.

²⁷ <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

²⁸ Id. at Question 8

²⁹ Id. at question 6

E. Defendant's Policy Prohibiting Discrimination, Harassment and Related Misconduct.

26. Defendant's "Policy Against Sexual Misconduct" (hereinafter "Policy") sets forth the definitions applicable to allegations of sexual misconduct. (See Exhibit 1 – Policy Against Sexual Misconduct).

27. In the Policy effective in April 2017, "Consent" is defined as:

Consent means the mutual understanding of words or actions freely and actively given by two informed people that a reasonable person would interpret as a willingness to participate in mutually agreed upon sexual activity.

- Consent is not effective when force, threat, or coercion is used
- Consent is not effective if the recipient party is incapacitated, asleep, or unconscious
- Silence or non-communication should never be interpreted as effective consent
- Consent to one type of sexual activity does not imply consent to other types of sexual activity Past consent is not future consent
- Consent can be withdrawn at any time

28. "Incapacitation" is defined as:

Incapacitation is the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. For example, a person may be incapacitated when asleep or under the influence of alcohol or drugs to an extent that the person is not capable of making a knowing decision. Knowledge of incapacity is evaluated based on a reasonable person standard. Accordingly, if a person has sexual contact with someone whom that person knows to be, or whom a reasonable person would know to be, incapable of making a rational, reasonable decision, that contact violates this policy.

Being intoxicated or under the influence of any substance at the time of sexual contact is never an excuse for violating this Policy

29. “Sexual contact” is defined as:

Sexual contact includes, but is not limited to, intentional touching of the genitals, buttocks, or breasts; coercion to force someone else to touch one’s genitals, buttocks, or breasts; penetration of an orifice (anal, oral or vaginal) with the penis, finger, or other object in a sexual manner; or sexual intercourse. Sexual contact can occur over clothing

30. According to the Policy effective April 28, 2017 any employee of Defendant who is not a “Confidential Campus Resource” has an obligation to report that information either directly or through a Community Concern Form to the Title IX Coordinator or the Title IX Deputy for Faculty and Staff.

31. Defendant’s “Student Sexual Misconduct Resolution Process” set forth the school’s policies and procedures for investigating and adjudicating allegations of sexual misconduct. See (Exhibit 2 – Student Sexual Misconduct Resolution Process).

32. Once the Title IX Coordinator is made aware of the complaint, the Title IX Coordinator will confer with the reporting party in order to consider options, which include whether the complainant wishes to pursue a “Adjudicated Resolution Process” or prefers to resolve the allegation with a “Non-Adjudicated Resolution Process”, or whether the Complainant does not wish to pursue a “Resolution Process” of any kind. If the Complainant wishes to pursue an “Adjudicated Resolution Process”, and if, after an investigation, the Title IX Coordinator determines there is sufficient evidence to proceed, a hearing will be conducted. If the Complainant wishes to pursue a “Non-Adjudicated Resolution”, the Title IX Coordinator may initiate that proceeding if both parties agree, but is not bound by that request if the Title IX Coordinator determines the “Non-Adjudicated Resolution Process is not in the best interests of the involved parties or the College.” If the Complainant wishes not to pursue the

matter, the Title IX Coordinator must consider the request, but may go forward with a response regardless of the complainant's request.

33. The Title IX Coordinator, or a designee may also issue interim restrictions, which include, but are not limited to

- no-contact or stay away orders between the complainant and the respondent;
- interim suspension;
- temporary exclusion from areas of campus;
- removal from or relocation to another residence hall;
- changes in academic/course schedules; or
- limiting participation in certain events, gatherings, or activities.

34. The "Adjudicated Resolution Process" provided by the College are defined as follows:

2. Adjudicated Resolution Process

a. Investigation. Upon initiation of a complaint, the Title IX Coordinator will ask the College investigator to pursue an investigation. The investigator will conduct a prompt, thorough and impartial investigation and prepare a written investigative report. In most circumstances, the investigator will meet individually with the complainant and respondent at least once during the investigation. The investigator may also meet with other persons who may have information about the incident, and may review e-mails, text messages, photographs, video surveillance and/or other physical, documentary, or other evidence as appropriate and available. The College will provide an opportunity during the investigation for both the complainant and respondent to advise the investigator of any witnesses they believe should be interviewed and other evidence they believe should be reviewed by the investigator.

At the conclusion of the investigation, the investigator will submit a written investigative report to the Title IX Coordinator setting forth the information that was collected. The investigator will also compile and submit to the Title IX Coordinator any documents or other evidence that will be provided to the CBSM panel. The Title IX Coordinator may ask clarifying questions of the parties or

may ask the investigator to conduct additional investigation if determined necessary.

b. Charging. The Title IX Coordinator will review the investigative report and determine whether there is sufficient information to support charging a student with a violation of the Sexual Misconduct Policy.

- i. If the Title IX Coordinator determines that there is insufficient information to support charging a student with a violation of the Sexual Misconduct Policy, the student will not be charged.
- ii. If the Title IX Coordinator determines that there is sufficient information that a student may have violated the Sexual Misconduct Policy, then within 5 business days after the final investigative report is submitted, a written Notice of Charges of Policy Violation (Notice of Charges) will be provided to the respondent and the complainant with summary information that supports the charge(s).

c. Acceptance of Responsibility. Within 5 business days after receipt of the Notice of Charges, the respondent has an opportunity to accept or not accept responsibility for the charge(s).

- i. If a respondent is charged and accepts responsibility for having violated the Sexual Misconduct Policy, the Title IX Coordinator will forward the case to the Community Board on Sexual Misconduct [CBSM] panel for determination of sanctions only.
- ii. If a respondent is charged but does not accept responsibility for having violated the Sexual Misconduct Policy, the Title IX Coordinator will forward the case to the CBSM panel for determination of both responsibility and sanctions.

d. Adjudication Hearing

i. Adjudicator. The CBSM hears all cases that proceed to an Adjudication Hearing. CBSM members receive annual training on issues related to sexual harassment, sexual assault, intimate partner violence, stalking, and how to conduct an investigative and decision-making process that protects the safety of all and promotes accountability.

ii. Hearing Goals. During a CBSM hearing, a CBSM panel determines whether there has been a violation of the College's Sexual Misconduct Policy. The hearing is intended to facilitate a decision based on information gathered during the investigative process and presented at the hearing. It is not intended to be an adversarial proceeding. The hearing is not a legal process, and it is not intended to mimic or substantially duplicate a civil or criminal trial.

The goals of the hearing are 1) to allow both the complainant and the respondent the opportunity to present their experiences and discuss the investigative report; 2) to allow an impartial panel to ask questions, consider the information presented, and decide whether a Sexual Misconduct Policy violation has occurred; and 3) if a violation is found, to allow the CBSM the opportunity to ask questions relevant to sanctions and determine appropriate sanctions for a violation.

iii. Preparation for the Hearing. The Title IX Coordinator or a designee will arrange the administrative details for the hearing, including: 1) selecting the members of the CBSM panel to hear and decide the complaint; 2) arranging a time and place for the hearing; and 3) making the investigative report and accompanying documentary or other evidence available to the panel members and to the parties.

iv. The Panel. In preparation for a hearing with a CBSM panel, the Title IX Coordinator selects a three-person panel from the full roster of trained board members to hear and adjudicate the complaint. The panel will ordinarily consist of one faculty, one staff, and one student representative. Before the panel is selected, the Title IX Coordinator will provide to the complainant and respondent the list of CBSM members available to serve on the panel. The complainant and respondent then have 48 hours to submit a written objection if the party believes that any prospective panel member has a conflict or is otherwise unable to fairly evaluate the information presented. After the panel is selected, the Title IX Coordinator will also inform the panel members of the parties' identities to determine whether any panel member has a relationship with either party that would affect their ability to decide the case impartially. The Title IX Coordinator will evaluate any objection by a party or potential conflict identified by panel members and determine which board members will serve on the panel.

v. Role of the CBSM Chair in the Hearing. The College Title IX Coordinator ordinarily serves as the CBSM chair. The chair's role is to ensure that procedures are followed and that Title IX requirements are met. The chair facilitates and is present for all phases of the hearing, but does not take a substantive role in the deliberations or vote following deliberations. The chair will resolve all questions that arise during the hearing, including but not limited to procedural issues and issues regarding the propriety or relevance of specific questions, arguments, and information presented. The CBSM chair will also seek to ensure an orderly and fair exchange of information and perspectives during the hearing. If anyone

attending the hearing acts without appropriate respect or decorum, the chair may ask them to leave the hearing. In consultation with the CBSM chair, the panel will determine whether it is necessary for the panel to hear and/or question particular witnesses.

vi. Role of Advisers. The adviser's role at the hearing is to offer support and assistance in a manner that does not disrupt the proceedings. Advisers will not be permitted to offer written or oral information to the panel. Students will be responsible for presenting their own statements and for answering the panel's questions. For more detailed information about the role of advisers, see the Advisers' Role and Responsibilities document available at this link.

vii. Role of Additional Support Individuals. In addition to an adviser, each complainant and respondent may have up to four other individuals present in a nearby support room during a hearing. These support individuals may not be present in the hearing room or participate in the hearing in any way.

viii. Hearing Procedures. Hearings are private and are not open to members of the College community or the public. Present during a hearing are the three CBSM panel members, the CBSM chair, the complainant, the complainant's adviser (if any), the respondent, and the respondent's adviser (if any). Any additional persons in attendance must be approved by the CBSM chair. During the hearing, complainants and respondents will be offered the opportunity to present prepared initial statements orally. The panel will then have the opportunity to ask the complainant and respondent questions. After the panel has had the opportunity to ask questions, the complainant and respondent will be offered the opportunity to make final oral comments.

At either party's request, the hearing can be set up so that the complainant and respondent will have minimal interaction during the hearing or will not be in the hearing room at the same time.

ix. Information Considered by the CBSM Panel. In reaching a decision, the panel will only consider information included in the investigative report or presented at the hearing, pertinent College policies, and other documents or materials shared with the panel by the Title IX Coordinator. A party's decision to not participate in an Adjudication Hearing does not preclude a determination regarding a complaint. Silence in response to an allegation will not be viewed as an admission of the allegation, but may leave the allegations undisputed.

Information about unrelated past behavior of the complainant and/or respondent, including the sexual history or dress of either party, will typically be excluded from consideration.

x. Determination of Violation or No Violation. Following the presentation of information at the hearing, the CBSM panel will determine whether a violation of the Sexual Misconduct Policy occurred. The CBSM panel will deliberate in private. In reaching a decision, the panel will apply **a preponderance of the evidence standard**, and will conclude that a violation occurred if it is “more likely than not” that a violation occurred. The panel will reach a decision by majority vote.

The chair will orally report the panel’s decision to the complainant and respondent before the commencement of the sanctioning phase of the hearing.

xi. Sanctioning. If the panel determines that the respondent violated the College’s Sexual Misconduct Policy, the hearing will continue. The panel will then allow both the complainant and the respondent to express their views orally about appropriate sanctions. The panel will then deliberate further to determine appropriate sanctions.

In determining sanctions, the panel’s objective will be to ensure campus health and safety by preventing the recurrence of problematic behavior and addressing its effects, including the effects of the violation on the complainant. The panel may consider a variety of factors in determining sanctions, including, but not limited to, the type of misconduct, the wishes of the complainant, the weight of the evidence, and the respondent’s disciplinary record. The sanctioning decision will also be informed by the degree to which the behavior was intentional, irresponsible, or without knowledge.

The complete disciplinary record of the respondent will be made available to the panel by the Dean of Students Office for use during sanctioning.

Possible sanctions include, but are not limited to:

Dismissal from the College

Suspension for one or more terms, with or without conditions for return

Disciplinary Probation

No Contact or Limited Contact Order

Chemical Health Assessment

Restricted Campus Access

Restricted Course Enrollment

Change of Housing
Warning
Required education or training
Sanctions may be combined.

A majority vote of the CBSM panel is required for all sanctions.

After the panel has reached a decision about sanctions, the chair will orally communicate the decision to the complainant and respondent, each separately.

The sanctions imposed by the CBSM do not go into effect until the appeal period has passed.

The Title IX Coordinator will follow up to ensure compliance with the sanctions determined by the CBSM panel and will maintain the resulting disciplinary record in accordance with the College Student Records policy.

xii. Record of the Hearing

Hearings will be audio recorded by the College for use in the event of an appeal. No other recordings are allowed. The recording and any notes taken during the hearing by any panel members, including the CBSM chair, will be maintained in accordance with the College's Student Records Policy. The Title IX Coordinator will maintain the resulting disciplinary record in accordance with the College Student Records policy.

xiii. Notice of Outcome

The parties will also receive simultaneous formal written notice of the hearing outcome. The College will strive to provide the written notice of outcome to the parties within two business days following the hearing. In some cases, more time may be required.

The determination of the CBSM panel may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final.

e. Appeal

Both parties have the right to appeal the outcome on any of the following grounds:

- procedural errors substantially impacted the final decision;
- relevant new information has come to light that was not available at the time of the hearing and would have substantially affected the panel's decision;
- the sanction is inconsistent with the seriousness of the offense.

A Statement of Appeal must be made in writing to the Title IX Coordinator within 5 business days of the date that the party receives written notification of the panel's decision and the sanctions imposed, if any. Any sanctions imposed by the CBSM are held in abeyance until the deadline for submission of a Statement of Appeal has passed. Once a student has submitted a Statement of Appeal, the sanction(s) will continue to be held in abeyance pending final appeal decision outcome.

The appeal adjudicator is the Dean of Students. In the event the Dean of Students is unavailable or has a conflict, the Vice President/Treasurer will act as the adjudicator. The appeal adjudicator determines the merits of the appeal and determines an appropriate remedy, if any.

Within 24 hours of receiving a Statement of Appeal, the Title IX Coordinator will notify the nonappealing party that an appeal has been filed and will communicate the basis of the appeal. The Title IX Coordinator will provide a copy of the Statement of Appeal to the non-appealing party. If the non-appealing party wishes to respond, they will have 3 business days to submit a written response to the appeal adjudicator.

The appeal adjudicator will act upon an appeal within a reasonable time, normally 5 business days after their receipt of the Statement of Appeal and any written response to the statement of appeal. After the appeal is decided, the appeal adjudicator will notify both parties concurrently in writing of the decision. Decisions of the appeal adjudicator are the final institutional response and may not be appealed.

F. The Night of April 27 and Morning of April 28, 2017

35. On or around April 23, 2017, Plaintiff received an email containing language about “a tradition of excellence” and an invitation to a meeting on campus set to take place at 2:00

a.m. on April 28, 2017. Plaintiff was instructed that if he wanted to take part, he was to meet at the Japanese Pagoda on campus at 2:00 a.m. and told not to speak to anyone about the message.

36. Over the course of the week leading up to the event, Plaintiff received several items, including a rock and a potato, that said “DO NOT LIVE IN FEAR” on them. In addition, several upperclassmen approached Plaintiff over the course of the week and said “DO NOT LIVE IN FEAR” when they passed by him.
37. At approximately 2:00 a.m., on Friday April 28, 2017, as instructed, Plaintiff arrived at the Japanese Pagoda, where a number of people had gathered and a box of alcoholic beverages awaited.
38. There were also a number of masked upperclassmen, who appeared to be in charge, who told the invitees they were being invited to join a secret group (DTX), and that if they did not want to take part in what was to come, they needed to leave. No one left.
39. At that location, Plaintiff, along with most of the group, consumed beer, wine, and shots of hard alcohol.
40. After most of the alcohol at the location was consumed, the group was instructed to go to then tennis courts down the hill from the Japanese Pagoda.
41. At that location there was another group of masked students, who provided the initiates with a box of jello shots and a case of beer, which they were instructed to consume.
42. Plaintiff vomited after chugging a beer at the tennis courts.

43. When the alcohol at the tennis courts was consumed, the initiates were told to go to the Goodsell Building, where masked students had a variety of beer and hard liquor the initiates were instructed to consume.
44. When the alcohol at the Goodsell Building was finished, the initiates were told to go to Stewsie Island, where masked students gave them wine, rum, rice krispy treats, and cheese.
45. The initiates were told to drink the alcohol and consume the food.
46. When the food and alcohol was gone, the initiates were then told to go to the hill of three oaks where masked students gave them lime-o-rita's and a bottle of Hot 100.
47. When the entire group arrived at the hill of three oaks, the entire group walked to the arboretum, where there was a bonfire.
48. At the bonfire, the masked students revealed their faces and told the initiates they were being initiated into their secret club called DTX.
49. The initiates then passed around and drank from the bottle of hot 100 while being given "new names" from the upperclassmen group members.
50. Once the bottle was finished, the initiates were instructed to go to the School President's House (Steve P) where they were to cover the house in toilet paper.
51. When the group left the bonfire, Plaintiff walked with his roommate and another friend who had been initiated.
52. Plaintiff and his roommate both had to be at a 6:00 a.m. workout for football, so they tried to stay together.

53. As the group neared the school president's house, they stopped at Central Park next to the Weitz Center for a bathroom break. When everyone was ready, they continued towards the President's House.
54. Following this stop, Jane Doe approached Plaintiff and introduced herself.
55. Plaintiff stated that he did not believe he had seen Jane Doe on campus before, and Jane Doe explained that she had not been on campus much as she had gone to study abroad twice.
56. As they walked, Plaintiff and Jane Doe talked.
57. Jane Doe explained that she was a Religion major and Plaintiff stated he was an Economics major.
58. They also discussed things they were involved in on campus, with Plaintiff explaining he played football and was on the club lacrosse team and Jane Doe explaining that she played frisbee.
59. Plaintiff was friends with another person on the frisbee team, so they talked about how they were both friends with that person.
60. Jane Doe also mentioned to Plaintiff an individual who she stated had lived on her floor during her freshman year. Plaintiff believes this was a reference to one of the masked students Jane Doe knew.
61. While this conversation was taking place, the group continued to walk toward the president's house.
62. Plaintiff was careful to stay with the group because he did not know where the president's house was and wanted to stay near his roommate so they would both be sure to make it on time to their morning workout.

63. As Plaintiff and Jane Doe were walking with each other, Jane Doe came to a stop, which halted Plaintiff because Jane Doe had her arm around Plaintiff.

64. At that time, Plaintiff looked at Jane Doe and said “what”, and Jane Doe started kissing Plaintiff.

65. Plaintiff took a step back out of confusion and suggested they continue walking to keep up with the group.

66. After a few more feet, Jane Doe stopped Plaintiff again and kissed him more.

67. While Plaintiff and Jane Doe kissed, Jane Doe grabbed Plaintiff’s penis over his clothes.

68. At that point, Jane Doe suggested she and Plaintiff find somewhere to sit, so they went back to Central Park and sat near a tree while talking about how crazy the night had been.

69. Plaintiff and Jane Doe then kissed more, with Jane Doe continuing to rub Plaintiff’s penis through his clothes.

70. Plaintiff then said that he felt uncomfortable doing what they were doing in the middle of the park and Jane Doe suggested that they go to Plaintiff’s dorm room, which was closer than hers.

71. Plaintiff and Jane Doe then then started to walk toward Plaintiff’s dorm.

72. On their way, they ran into some people who were part of the larger group, who said that campus security was approaching, so Plaintiff and Jane Doe followed the group away from the area.

73. During this time, Plaintiff saw his roommate, standing with a number of other people, and told him that he had Jane Doe would need the room.

74. While standing in a group of people, Plaintiff’s roommate responded “okay”.

75. Plaintiff later sent a message in his roommate group chat also requesting privacy in the room.

76. Plaintiff and Jane Doe then continued to walk toward Plaintiff's dorm.

77. At the outside entrance to the dorm, Plaintiff got out his OneCard, which was attached to his phone, and scanned them into the building.

78. As they walked into the building, Jane Doe began kissing Plaintiff's neck, which made Plaintiff laugh as they walked up the steps.

79. Plaintiff and Jane Doe then entered Plaintiff's room, where they sat on the couch, making out.

80. After some time, Plaintiff excused himself to use the bathroom, and went to the hallway bathroom to use the restroom.

81. Plaintiff also took a cup, which he filled with water that he then shared with Jane Doe as they sat on the couch in his room.

82. Jane Doe thanked Plaintiff for the water, and Plaintiff mentioned that he would need to leave soon for his morning workout.

83. Jane Doe stated that was "okay" and she and Plaintiff started kissing again.

84. Plaintiff and Jane Doe then undressed, with Jane Doe removing Plaintiff's shirt, then Plaintiff removing Jane Doe's shirt, then Jane Doe helping Plaintiff remove his pants, and then Plaintiff helping Jane Doe take off her boots, while Jane Doe undid the top of her pants and pulled them to her knees, where Plaintiff finished removing them.

85. When Plaintiff and Jane Doe finished removing their clothes, Jane Doe said she was on birth control, but said Plaintiff should get a condom.

86. Plaintiff then walked to his closet, got a condom, and then returned to the couch.

87. Before starting, Plaintiff checked with Jane Doe and asked if she was certain that she wanted to have sex and was comfortable with doing it.
88. Jane Doe responded by saying “Yes I am”, to which Plaintiff responded, “Are you sure? I want to make sure we are on the same page.” Jane Doe giggled and said “Yes I am”.
89. Plaintiff then put on the condom and penetrated Jane Doe.
90. Plaintiff bumped into Jane Doe’s face a few times and apologized, to which Jane Doe would react and respond with “it’s okay” and laugh.
91. While Plaintiff was on top of Jane Doe, he struggled to maintain an erection and told Jane Doe.
92. Jane Doe responded, saying “Hey you’re doing okay don’t worry”.
93. Eventually, Plaintiff and Jane Doe switched positions so that Plaintiff was laying on his back.
94. From this position, Jane Doe aggressively stroked Plaintiff’s penis to get him erect.
95. After a few minutes of this, Jane Doe got on top of Plaintiff and used her hand to insert Plaintiff’s penis into her vagina.
96. Jane Doe then rocked back and forth while Plaintiff laid on his back with his hands behind his head.
97. Plaintiff’s room consisted to two (2) rooms with a bathroom connecting them.
98. While Jane Doe was on top of Plaintiff, Plaintiff heard a knock at the bathroom door and then his roommate telling him to hurry up through the door because they had to be at workouts in 10 to 15 minutes.

99. Around this same time, the alarm Plaintiff had set on his phone went off, and Plaintiff turned it off.

100. Plaintiff told Jane Doe they would need to hurry because he had to go, and Jane Doe responded “No problem, its fine.”

101. A few minutes later, the second alarm on Plaintiff’s phone went off and he got up and dressed in a hurry after he saw a friend had texted him saying he had to go right away.

102. While Plaintiff was dressing, he told Jane Doe that she was welcome to stay as long as she wanted and that if she wanted, she could use any of Plaintiff’s clothes.

103. Jane Doe responded, “Aw, thanks. That’s nice of you,” and then stood up from the couch and kissed Plaintiff before he ran out of the room and down the stairs on his way to the stadium for workouts.

104. At the workout, Plaintiff vomited during warmups.

G. Jane Doe Leaves Plaintiff’s Room

105. Approximately one minute after Plaintiff left his room, according to video evidence, Jane Doe left his room wearing one of Plaintiff’s shirts.

106. Jane Doe wandered down the hallway and around for a while, looking for a bathroom, before going up the stairs to the next floor.

107. There, Jane Doe entered a room that was on that floor.

108. There, a male student awoke to find a female wearing a t-shirt, underwear, and socks asking to lay down.

109. He pointed to his roommate’s bed, because it was empty, and Jane Doe laid down.

110. The student’s roommate returned a few minutes later, and saw Jane Doe in his bed.

111. He asked her who she was and told her to leave. Jane Doe said she was “sorry” and rolled over to go back to sleep, so they called campus security to get Jane Doe.
112. The students were able to get Jane Doe out of bed and into the hallway, where they made small talk with her.
113. The students noted that Jane Doe seemed sluggish and unsteady on her feet, but knew her name and was able to talk about her studies.
114. The students remained with Jane Doe until campus security arrived.
115. When security officer Steven Hanson arrived, he found Jane Doe and the students in the hallway outside of the students’ room.
116. Security Officer Hanson felt that Jane Doe was intoxicated based on her slurred speech and not knowing where the rest of her clothes were.
117. Security officer Hanson contacted the on-call area director, Taylor Morgan and questioned Jane Doe regarding whether she wanted to be examined at Northfield Hospital because of her condition.
118. Jane Doe indicated she just wanted to go to her room to sleep.
119. Security officer Hanson then escorted Jane Doe to the main entrance to Davis Hall. Jane Doe was able to walk under her own power.
120. Taylor Morgan then met Jane Doe and security officer Hanson in the main entrance at 6:20 a.m.
121. Hanson and Morgan then drove Jane Doe to her dorm in a campus security vehicle.
122. During that drive, Jane Doe identified her roommate and said that she would be in the room.

123. When they arrived at the room, the roommate was present, but indicated she had to leave for class soon.
124. At that point, security officer Hanson decided he was going to call for an ambulance to have Jane Doe's condition assessed.
125. While security officer Hanson and Taylor Morgan waited with Jane Doe for the ambulance to arrive, security officer Hanson asked Jane Doe if she had been assaulted. Jane Doe stated that she had not been assaulted and must have entered the wrong room.
126. As Hanson and Morgan continued to question Jane Doe about why she was in Davis Hall and not wearing pants, Jane Doe explained she might have been in that dorm because she wanted to hook up with someone there.
127. After that exchange, Jane Doe began to vomit.
128. Shortly after that, EMTs arrived to assess Jane Doe. EMTs found her alert and oriented to place, person, and time, but unable to give correct answers to certain questions. For example, when asked who the president was, Jane Doe stated "Steve P.", Carleton's President, which is how many students refer to Carleton's president, and when asked again stated "Bush." Jane Doe also stated that she was a member of a "secret society", like a frat, but they don't have those at Carleton.
129. During transport to the hospital, Jane Doe vomited in the ambulance.
130. At the hospital, doctors noted that Jane Doe was not slurring her words and seemed remorseful about being there. She was given IV fluids and discharged home.

H. Plaintiff Returns to an Empty Room

131. At approximately 7:30 a.m., after his workout and breakfast with his teammates, Plaintiff returned to his room.

132. Jane Doe was not there, but some of her clothes, including her boots, and her OneCard were still in the room.

133. There was vomit on the floor and a used tampon near the garbage can.

134. Plaintiff assumed that Jane Doe had put on some of his clothes and gone back to her room.

135. Plaintiff wanted to let Jane Doe know she could get her stuff any time, but did not know how to contact her. He then recalled that they had a common friend from Jane Doe's frisbee team, so he asked the teammate for Jane Doe's number.

136. At approximately 11:46 a.m., Plaintiff texted Jane Doe to let her know that some of her stuff was still in his room and that she could come by to pick it up.

137. At around 7:30 p.m., Jane Doe went to Plaintiff's room to get her stuff. Plaintiff was not there, but left his room unlocked so Jane Doe could retrieve her belongings.

138. After that, she texted Plaintiff asking if they had sex.

139. Plaintiff responded by stating that the night was mostly a blur, but he did remember having sex.

140. Jane Doe responded by asking if they had used a condom, which Plaintiff stated they had.

I. Jane Doe Makes a Sexual Assault Report

141. At around 3:00 p.m. on April 28, 2017, Jane Doe went to practice, where she reported still feeling drunk.

142. Around 6:00 p.m., Jane Doe started to sober up and began to feel she had been dangerously intoxicated, and started to get scared after talking with her friends, who felt she might have been raped.
143. Around 10:30 p.m., Jane Doe went to speak with security officers, and spoke with Ryan Holicky and Steve Romenesko, the area director on call at that time. Title IX Deputy Laura Haave was also present at this meeting. During this meeting, Jane Doe asked if she would face discipline for underage drinking.
144. Ms. Haave was appointed to be Jane Doe's support person during these proceedings.
145. Ms. Haave's online presence indicates a strong anti-male stance. (See Exhibit 3 - Haave Twitter Posts)
146. About 20 minutes after this meeting ended, Jane Doe called campus security and asked for a ride to the hospital for a sexual assault evaluation.
147. At the hospital, Jane Doe explained that after she sobered up and talked to some people, including discussions via Facebook, she felt there were issues with the "informed consent" to having sex. She was also concerned about a possibly retained tampon.
148. The Facebooks discussions that lead to Jane Doe's decision were never submitted as evidence in this matter.
149. Jane Doe then underwent a sexual assault examination. There was no retained tampon.
150. Campus security forwarded their reports to Title IX Coordinator Amy Sillanpa.

J. Plaintiff is Informed of Allegations

151. On May 3, 2017, Plaintiff received an email from Title IX Coordinator Amy Sillanpa, stating that Carleton had issued a mutual no contact order between Plaintiff and Jane Doe.

152. That notice informed Plaintiff of locations he could not be on campus, but provided no explanation of the basis for the order. (See Exhibit 4 – No Contact Order)
153. On May 10, 2017, Plaintiff received an email from Amy Sillanpa informing him that Jane Doe had filed a complaint against him alleging Plaintiff violated the school’s sexual misconduct policy on April 28, 2017. (See Exhibit 5 – May 10, 2017 Email to Plaintiff from Amy Sillanpa).
154. That email contained links to certain Carleton policies regarding sexual misconduct and informed Plaintiff that he was to attend a meet with Ms. Sillanpa where he would not be expected to answer questions about the allegation, but would be given information about the process.
155. It also informed Plaintiff that he would meet with Mary Dunnewold, “our college investigator”.
156. Mary Dunnewold, the investigator, is an alumna of St. Olaf, majoring in women’s studies, is a Title IX Deputy and Carleton, and has presented at Carleton College regarding sexual assault.
157. Ms. Dunnewold’s training materials to students consists of examples of male perpetrators deemed responsible for sexual misconduct for engaging in sexual intercourse with a female complainant under a variety of circumstances. (See Exhibit 6 - Carleton Voice Article “A Matter of Consent” quoting Mary Dunnewold; Exhibit 7 – Carleton Voice article “Locker Room Talk”).
158. This is consistent with Carleton College’s Evidentiary Exams with a SANE Nurse website, which presumes students seeking evidentiary exams will be female by stating

“SANE Nurses are all female, and are on-call 24 hours a day.”

https://apps.carleton.edu/dos/-sexual_misconduct/get_help/immediate_help/sane_exams/

K. Plaintiff Meets with the College’s Investigator

159. That meeting happened on May 16, 2017.

160. Plaintiff was accompanied by his attorney, Jonathon Reppe. The meeting lasted for about 45 minutes. Investigator Dunnewold asked Plaintiff to explain what happened on the night in question and presented Plaintiff with video from that night.

161. During the interview, Investigator Dunnewold asked Plaintiff to explain what the video footage looked like was occurring, which Plaintiff did.

162. Investigator Dunnewold also asked Plaintiff if there was anything else he would like to add, to which he stated that he would like the report to include that Jane Doe was the aggressor and initiated contact with him and maintained her consent at all times.

Investigator Dunnewold stated “I will take note of that.”

163. Specific details provided by Plaintiff included that he met Jane Doe that night.

164. Jane Doe kissed him several times and grabbed his penis.

165. The pair then went to Plaintiff’s room, where they engaged in consensual sexual intercourse, where he asked Jane Doe for verbal consent on several occasions, and during which time Jane Doe stated she was on birth control and asked Plaintiff to use a condom.

166. Plaintiff also explained that while he and Jane Doe had both been drinking, Jane Doe was coherent, able to walk and talk clearly, and had been telling him about people and events she was involved in, in such a manner that Plaintiff had no reason to believe Jane Doe was intoxicated to the point of incapacity.

167. He also explained that during intercourse, Jane Doe got on top of him on the couch, stroked his penis, used her hand to place his penis into her vagina, and was able to move freely and maintain her balance while on top of him on the couch.

L. Plaintiff Meets with Northfield Police Investigators

168. On May 19, 2017, Plaintiff met with investigators from the Northfield Police Department.

169. During that interrogation, Plaintiff provided details entirely consistent with what he told the College's investigator.

170. Specifically, Plaintiff explained that he was invited to an initiation event for a secret society.

171. At that event, he drank numerous kinds of alcohol, and, at one point, vomited after consuming beer.

172. Later in the night, he met Jane Doe, and they started talking.

173. At some point, Jane Doe kissed Plaintiff, and, after that, they walked together, occasionally stopping to kiss.

174. During one of the times they were kissing, Jane Doe grabbed Plaintiff's penis through his pants.

175. After that, Plaintiff and Jane Doe started going toward Plaintiff's dorm room, where they ended up having sexual intercourse. This occurred because Plaintiff said he was uncomfortable engaging in this heavy petting outside and Jane Doe suggested they go to Plaintiff's dorm room.

176. Plaintiff explained that he was aware Jane Doe had been drinking, as had he, but felt that Jane Doe was aware of what she was doing and was a willing participant in the sexual contact to the point that he considered her the aggressor in initiating it.
177. Plaintiff was charged, by summons and complaint, with third-degree criminal sexual conduct on July 17, 2017.
178. As part of the discovery process in the criminal case, Plaintiff learned of the following evidence that had been provided to law enforcement by Defendant but had not been included in the Investigative Report presented at Plaintiff's hearing or in the materials that Plaintiff was provided:
- a. Video evidence that contradicted Jane Doe's account of her physical state while awaiting EMT assistance;
 - b. Audio evidence of Jane Doe's conversation with campus security;
 - c. Evidence that Jane Doe asked campus security if she would face discipline for underage drinking before filing her complaint and being told by Title IX Coordinator Amy Sillanpa that she would not face discipline if it was part of a sexual assault claim;
 - d. That Security Director Romenesko's supplement was missing from the initial Security Report used at the school's hearing.
179. Despite the above described video and audio evidence being provided by Defendant to the Northfield Police Department, Plaintiff was never notified of the existence of this evidence during the course of Defendant's proceedings against him.

180. Plaintiff also learned through discovery provided in the criminal proceedings that Jane Doe stated that after learning she and Plaintiff had sex, Jane Doe spoke to a friend and told the friend that she felt she had been sexually assaulted because she did not remember having sex, but that Jane Doe did not remember doing anything such as saying no, pushing Plaintiff away, or any other kind of dissenting action.

181. This information was not contained in the Investigative Report used to expel Plaintiff.

182. The charges against Plaintiff were dismissed by the prosecution in August 2018.

M. Defendant's Disciplinary Proceedings against Plaintiff

183. Following this meeting, Plaintiff received a letter from Amy Sillanpa, dated May 19, 2017, informing him that Ms. Sillanpa had reviewed the Investigative Report and had concluded that there was sufficient information to charge Plaintiff with a violation of the Sexual Misconduct Policy. (See Exhibit 8 – May 19, 2017 Letter from Amy Sillanpa to Plaintiff).

184. The letter further informed Plaintiff that he had five (5) days to either accept responsibility for the charge or not accept responsibility for the charge, and if he did not accept responsibility, a hearing before the Community Board on Sexual Misconduct would take place at May 31, 2017, at 5:30 p.m.

185. Plaintiff was also informed that he would be allowed to see the Investigative Report after 2:00 p.m. on Monday, May 22, 2017, and that he would be allowed to submit, in writing, challenges to the Report, which may or may not be considered. (See Exhibit 9 -Investigative Report).

186. Despite being allowed to review the Investigative Report, Plaintiff was not allowed to hear the recordings upon which Investigator Dunnewold's version of events were based.
187. Plaintiff later became aware that certain evidence presented with the report, including the text messages presented as Document 1 of the Investigative Report, did not contain all the messages that were a part of the actual document, with important evidence weighing on the credibility of certain witnesses about what they saw and how concerned they were about what they saw excluded.
188. This included the GroupMe texts provided by Jane Doe, and included in the Investigative Report, that were edited to remove a photograph of one of Jane Doe's support witnesses that showed the witness in a celebratory mood at the end of the night, which is contrary to her testimony that she spent the end of the night worried about Jane Doe.
189. Plaintiff was also informed that he was to schedule a meeting with Ms. Sillanpa in preparation for the May 31, 2017 hearing.
190. That meeting occurred May 25, 2017, with Plaintiff's attorney present.
191. At that meeting, Plaintiff's attorney asked if Plaintiff was able to ask or present questions at the hearing. Ms. Sillanpa said Plaintiff would not be allowed to introduce questions. He was also told that witnesses would not be necessary at the hearing, as he would not be allowed to present any.
192. At that meeting Plaintiff also inquired whether Jane Doe submitting an article to the Carleton College CLAP accusing Plaintiff of sexual assault was considered retaliation.
193. Plaintiff was informed that it was not considered retaliation because it did not mention his name, even though two (2) students interviewed by Mary Dunnewold said they knew what

happened because of the CLAP article and even though Plaintiff had been told not to attend an upcoming lacrosse social event because of the article.

194. The hearing before the Community Board of Sexual Misconduct took place on May 31, 2017.
195. Plaintiff was allowed to hear Jane Doe's testimony from a separate room.
196. However, he was not allowed to ask any questions and was not allowed to present any evidence other than his text conversation with Jane Doe.
197. Plaintiff did submit an article from the National Institute of Health called "What Happened? Alcohol, Memory, Blackouts, and the Brain." This article was submitted to explain why Jane Doe could not remember what happened while blacked out even though she remained capable of rational thought and conversation during her interactions with Plaintiff.
198. During Jane Doe's rebuttal, Jane Doe attempted to introduce an alleged anonymous complaint against Plaintiff from a second student without any evidence.
199. During Plaintiff's rebuttal, he clarified certain allegedly incriminating statements, such as telling Jane Doe to keep moving and provided additional details about the sexual encounter.
200. After deliberation, the panel found Plaintiff responsible based on the evidence presented by the CBSM Chair/Title IX Coordinator.
201. On or around May 31, 2017, Plaintiff was informed by Ms. Sillanpa that the CBSM had found he committed sexual misconduct and had recommended that he be suspended for three (3) terms.

202. Jane Doe was also informed of the results of that hearing at around the same time.

Plaintiff could hear Jane Doe screaming after being told of the sanction

203. On June 2, 2017, Plaintiff received a letter from Ms. Sillanpa, explaining he had been found responsible for committed sexual misconduct and explaining he had the ability to appeal the determination on the basis of: “1) procedural errors that may substantially impacted the final decision; 2) relevant new information that was not available at the time of the resolution meeting, and would have substantially affected the Panel’s decision; and/or 3) the sanction is inconsistent with the seriousness of the offense.” (See Exhibit 10 – June 2, 2017 Letter from Amy Sillanpa to Plaintiff).

204. On June 9, 2017, Plaintiff submitted an appeal of the CBSM panel decision and sanctions imposed. (See Exhibit 11 – June 9, 2017 Appeal Letter).

205. In his appeal, Plaintiff argued that:

1. The procedure used by Carleton College (Carleton) did not meet the requirements established by the Department of Education’s Office of Civil Rights (OCR) and resulted in procedural errors which substantially impacted the decision.
2. The CBSM Panel did not have all of the relevant information pertaining to his intoxication and the relative incapacitation of the parties, including the entire GroupMe text messages that included photographs of Jane Doe’s witness.
3. The sanction is inconsistent with the seriousness of the offense based upon the facts alleged.

206. Prior to initiating his appeal, Plaintiff requested that he have access to the actual audio recordings of witness statements, not just the summary Investigator Dunnewold included in the Investigative Reports.

207. This request was denied.

208. Jane Doe also appealed, arguing that the three (3) term suspension was not sufficient punishment and stated the sanctions did not send a strong enough message to the campus community.

209. In a letter, dated June 19, 2017, Dean of Students Carolyn Livingston denied Plaintiff's appeal, stating the evidence showed that "[Jane Doe] was clearly incapacitated". Ms. Livingston also granted Jane Doe's appeal, amending Plaintiff's punishment to permanent expulsion, stating that "The fact that you continue to assert that it was acceptable to engage in sexual activity with a person in [Jane Doe's] condition is deeply troubling and shows that your continued attendance at Carleton would pose a danger to not only her, but other members of the community as well." The letter also stated the decision was based on "several factors", yet did not specify anything other than the video evidence. (See Exhibit 12 – June 19, 2017 Letter from Carolyn Livingston to Plaintiff).

COUNT I
Declaratory Judgment – Title IX

210. Plaintiff repeats and realleges paragraphs 1 through 209 as if fully set forth herein.

211. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, and the regulations promulgated thereunder require a school receiving federal funds to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student . . . complaints alleging any form of sexual harassment, including sexual assault."³⁰ These procedures must "accord[] due process to both parties involved"³¹

³⁰ 34 C.F.R. § 106.8(b)

³¹ 2001 Guidance at 20.

212. Upon information and belief, Defendant receives federal funds and must comply with Title IX.

213. The “prompt and equitable” procedures that a school must implement to “accord due process to both parties involved” must include, at a minimum: (a) “[n]otice . . . of the procedure, including how complaints may be filed”; (b) “[a]dequate, reliable, and impartial investigation of complaints”; (c) “the opportunity to present witnesses and other evidence”; and (d) “[d]esignated and reasonably prompt timeframes for the major stages of the complaint process.” A school must also ensure that all employees involved in the conduct of the procedures have “adequate training as to what conduct constitutes sexual harassment,” which includes “alleged sexual assaults.”³²

214. As written, the Defendant’s student disciplinary process in effect in the 2016-2017 school year violated Title IX and the regulations thereunder, which have the force of law, including the requirements that: the procedures comport with due process, be “prompt and equitable,” uphold the preponderance of the evidence standard, and Defendant deliver to Plaintiff written notice of the outcome of the investigation and the rationale therefor.

215. Those violations include, but are not limited to, the following: (a) the lack of a meaningful hearing process wherein Plaintiff had an opportunity to present evidence and subject the evidence against him to any adversarial testing, (b) failure to provide Plaintiff with written notice of the determination and the rationale therefor, (c) the lack of a meaningful right to appeal, and (d) presuming Plaintiff’s guilt by maintaining a policy that

³² 2001 Guidance at 21.

required no corroboration of the allegation against Plaintiff even where the complaining witness claimed no recollection of the events.

216. As implemented, Defendant's student disciplinary process in effect during the 2016-2017 school year, including the Student Sexual Misconduct Resolution Process, violated Title IX and the regulations thereunder, which have the force of law, including the requirements that the procedures comport with due process, be "prompt and equitable," uphold the preponderance of the evidence standard, and Defendant deliver to Plaintiff written notice of the outcome of the investigation and the rationale therefore. Those violations, which are described above, include, but are not limited to, the following: (a) the lack of a meaningful hearing process wherein Plaintiff had an opportunity to present evidence and subject the evidence against him to any adversarial testing, (b) failure to provide Plaintiff with written notice of the determination and the rationale therefor, (c) the lack of a meaningful right to appeal, (d) and presuming Plaintiff's guilt by maintaining a policy that explicitly states that corroboration of the allegations against Plaintiff is unnecessary.

217. As applied to Plaintiff, Defendant's student disciplinary process in effect during the 2016-2017 school year, including the Student Sexual Misconduct Resolution Process, violated Title IX and the regulations thereunder, which have the force of law, including the requirements that the procedures comport with due process and be "prompt and equitable." Those violations which are described above, include, but are not limited to, the following: (a) the failure to perform a threshold evaluation of the charge, including denying Plaintiff the right to tell his side of the story; (b) the failure to conduct a "thorough, reliable and impartial" investigation with a trained investigator; (c) the failure to set an appropriate, fair

hearing date that would have allowed Plaintiff to rely on exculpatory evidence; (d) the failure to provide fair and meaningful notice of the charges; (e) the refusal to contact witnesses identified by Plaintiff; (f) the failure to provide an unbiased disciplinary process and tribunal; (g) the failure to ensure that Plaintiff be presumed innocent and that Defendant had the burden of proof; (h) the failure to ensure that there be sufficient evidence to support the Investigator's conclusion; (i) otherwise acting to achieve a predetermined result, *i.e.*, a finding that Plaintiff committed sexual assault or some related offense.

218. Pursuant to the provisions of 28 U.S.C. §§ 2201, 2202, and 1651, Plaintiff is entitled to (a) a declaratory judgment that Defendant's 2016-2017 student disciplinary process, including the Student Sexual Misconduct Resolution Process, as written, violated Title IX (including its due process requirements); (b) a declaratory judgment that the Defendant's student disciplinary process as implemented, violated Title IX (including its due process requirements); (c) a declaratory judgment that Defendant's student disciplinary process as applied to Plaintiff, violated Title IX (including its due process requirements); and (d) further necessary or proper relief.

COUNT II

Violation of Title IX – Erroneous Outcome from a Flawed Proceeding

219. Plaintiff repeats and realleges paragraphs 1 through 218 as if fully set forth herein.

220. Title IX prohibits discrimination on the basis of sex in a school's "education program or activity," which includes all of the school's operations.

221. Upon information and belief, Defendant receives federal funds and must comply with Title IX.

222. A victim of discrimination based on his or her gender has, under Title IX, a private right of action against the offending school for monetary damages and equitable relief.

223. As set forth above, Defendant engaged in a series of rushed actions that ultimately resulted in the erroneous finding that Plaintiff committed sexual assault. This represents disparate treatment of Plaintiff by Defendant on the basis of his sex.

224. As fully set forth above, there were significant evidentiary weaknesses underlying Defendant's finding, including:

- a. The absence of any evidence Jane Doe objected to the sexual contact,
- b. Failure to fully interview all witnesses, ask appropriate relevant question, and present all relevant evidence in the investigator's report,
- c. Potential bias and interest in finding the Plaintiff responsible to show compliance with Title IX,
- d. No opportunity to question Jane Doe regarding the allegations,
- e. No opportunity to view all the evidence, particularly exculpatory evidence,
- f. Unnecessary haste in reaching a conclusion despite the federal government removing the 60-day timeline for completing investigations, with Plaintiff told by Amy Sillanpa that the process had to be "wrapped up prior to the end of the term",
- g. Failure of investigation to take into consideration Jane Doe's state of mind in making the allegations and whether they were instigated by her regret and/or friends' retaliatory urging to report or in order to avoid consequences of underaged drinking, and whether she was biased against Plaintiff because of his race,

225. In addition to the lack of evidence against Plaintiff, there were, as set forth above, numerous procedural flaws that affected the proof, including the lack of an appropriate investigation by a properly trained and unbiased investigator; the refusal to provide Plaintiff with a hearing wherein he could actually contest the allegations against him, the prohibition on Plaintiff being allowed to conduct his own investigation or contact any potential witness, the presumption of guilt applied to Plaintiff from the outset, and the impermissible shifting of the burden of proof to Plaintiff.
226. The erroneous outcome of the hearing and purported appeal can only be explained by gender bias against males in cases involving allegations of sexual assault. This bias is reflected in the patterns of decision making by Defendant throughout the entire process and by the biased training agents of which Defendant received.
227. Moreover, upon information and belief, in all, or in virtually all, cases of campus sexual misconduct at Carleton College, the accused student is male and the accusing student is female. Defendant has created an environment in which it is impossible for a male accused of sexual assault to receive the due process guaranteed by Title IX and the US Constitution. This significant gender-based statistical disparity demonstrates the existence of discrimination. In fact, Defendant impermissibly presumes male students “guilty until proven innocent” based on invidious gender stereotypes and has codified this by policy. (See Exhibit 6, 7).
228. There are at least four causes for this discriminatory environment at Carleton College. First, acquittal of an accused male student carries the threat that the Department of Education’s Office for Civil Rights could institute an investigation that would result in

Defendant's loss of federal funding. There could also be a civil suit filed by the female complainant, a type of suit that garners much more publicity than a suit by the accused and convicted male student.

229. Second, Defendant's officials in charge of or involved in the disciplinary process are not thinking about justice, individual rights, or their obligations to provide a fair and equitable procedure in accordance with due process guarantees; rather, they are thinking what would be most expedient for them in their professional roles.

230. Third, these officials also focus on what would be most expedient for Carleton College and, in particular, avoiding publicity that could harm its image and brand, and hinder its efforts to attract tuition-paying students, particularly in light of the criticism it received related to its handling of a priest professor accused of sexual assault. The safer course for these officials is to convict all accused male students rather than face the negative publicity associated with decisions such as those made in the Madeline Wilson case at nearby St. Olaf. Further evidence of this arose in the fact that 13 students in charge of the hazing event were immediately suspended without a hearing due to media coverage, but later, 12 of the 13 had their suspensions quietly overturned.

231. Fourth, Defendant's officials are susceptible to internal and external pressures, including efforts by those who wish to change the so-called "campus rape culture" at the expense of the individual rights of the accused male students. Defendant and its officials have plainly embraced this view, and the misandry it embodies. The resulting bias is obvious in the Student Sexual Misconduct Resolution Process.

232. The September 2017 Q&A reaffirms the vitality of the 2001 Guidance and is OCR's latest interpretation of Title IX as it relates to sexual assault proceedings on campus. As set forth in the Letter, OCR states that compliance with Title IX requires the following:

- a. A school's "Title IX coordinator [the official charged with compliance] should review the [school's] disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX."³³
- b. **"Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence**, once notified that the police department has completed its gathering of evidence . . . , the school must promptly resume and complete its fact-finding for the Title IX investigation."³⁴
- c. The complainant and the accused student **"must have an equal opportunity to present relevant witnesses and other evidence."**³⁵
- d. The complainant and the accused student "must be afforded similar and timely access to any information that will be used at the hearing. For example, a school should not conduct a pre-hearing meeting during which only the [complainant] is present and **given an opportunity to present his or her side of the story**, unless a similar meeting takes place with the [accused student]."³⁶
- e. **"Schools must maintain documentation of all proceedings**, which may include written findings of fact, **transcripts, or audio recordings."**³⁷

³³ *Id.* at 8.

³⁴ *Id.* at 10 (emphasis added) (footnote omitted).

³⁵ *Id.* at 11 (emphasis added).

³⁶ *Id.* (emphasis added).

³⁷ *Id.* at 12 (emphasis added).

- f. “[S]chools [should] provide an appeals process.”³⁸
- g. “In sexual violence cases, the fact-finder and decision-maker also should have **adequate training or knowledge regarding sexual violence.**”³⁹
- h. “If an investigation or hearing involves forensic evidence, that evidence should be reviewed by a **trained forensic examiner.**”⁴⁰

233. The conclusion of the investigative process can only be explained by gender bias and an improper process. Plaintiff, based solely on his gender, suffered an erroneous outcome of the disciplinary process. This unlawful discrimination by Defendant, in violation of Title IX proximately caused Plaintiff to sustain substantial injury, damage, and loss, including, but not limited to: mental anguish; severe emotional distress; injury to reputation; past and future economic loss; deprivations of due process; loss of educational opportunities; and loss of future career prospects.

COUNT III **Negligence**

234. Plaintiff repeats and realleges paragraphs 1 through 233 as if fully set forth herein.

235. Having put in place a student disciplinary process, including the Student Sexual Misconduct Resolution Process, Defendant owed a duty of care to Plaintiff and others to conduct that process in a non-negligent manner and with due care to avoid arbitrarily dismissing students.

³⁸ *Id.*

³⁹ *Id.* (emphasis added).

⁴⁰ *Id.* (emphasis added).

236. The conduct of Defendant and its agents fell below the applicable standard of care and amounted to breaches of the duty of due care and incompetence. This conduct included, but was not limited to, implementing its Policy in a manner that is biased on the basis of gender, failing to proceed with a presumption of innocence, and failing to implement the policy in a manner that would result in a fair process, tilted to favor a particular outcome by not having a fair and neutral fact finder.

237. These breaches of the duty of due care caused Plaintiff, in fact and proximately, to sustain substantial injury, damage, and loss, including, but not limited to: mental anguish; loss of trust; severe emotional distress; injury to reputation; past and future economic loss; deprivations of due process; loss of educational opportunities; and loss of future career prospects.

COUNT IV
Title VI, 42 U.S.C. § 2000d

238. Plaintiff repeats and realleges paragraphs 1 through 237 as if fully set forth herein.

239. 42 U.S.C. § 2000d, commonly referred to as Title VI, and its implementing regulations prohibit discrimination in a federally-funded school on the basis of a student's race.

240. Plaintiff was subjected to harassment, discrimination, and disparate treatment on the basis of his race when he was removed from Carleton College on the basis of allegations that did not result in the removal of similarly situated Caucasian students.

241. Carleton College intentionally, willfully, and without justification acted to deprive Plaintiff of this rights, privileges and immunities secured to him by the laws of the United States.

242. Carleton College, despite knowledge and adequate opportunity to learn of its misconduct failed to take action to remedy the harassment, discrimination, and disparate treatment of Plaintiff.

243. As a result of Carleton College's conduct, customs, policies, and practices, Plaintiff was unjustly and discriminatorily deprived of equal education opportunities and benefits.

COUNT V
Minnesota Human Rights Act, § 363A.13

244. Plaintiff repeats and realleges paragraphs 1 through 243 as if fully set forth herein.

245. Minn. Stat. § 363A.13 prohibits discrimination on the basis of, but not limited to, race, color, creed, and national origin in any educational institution.

246. As such, Carleton College had a duty to provide Plaintiff with an educational atmosphere free of racial discrimination.

247. Defendant failed to take adequate steps to provide Plaintiff with an educational atmosphere free of racial discrimination.

248. As a result of Carleton College's conduct, customs, policies, and practices, Plaintiff was unjustly and discriminatorily deprived of equal education opportunities and benefits.

RELIEF REQUESTED

WHEREFORE, plaintiff prays for judgment against defendant, jointly and severally, and asks this Court to:

1. issue a judgment that (a) declares the Defendant's student disciplinary process, including the Student Sexual Misconduct Resolution Process, as written, as implemented, and as applied to Plaintiff, to be in violation of Title IX, including its due process requirements; (b)

requires Defendant to expunge the entire disciplinary proceeding from its records; (c) declares Defendant's conduct to be wrongful, willful, intentional, and reckless; (d) prohibits Defendant from referencing Plaintiff's disciplinary proceeding in the event of any third-party inquiry; and (e) declares that upon any third-party inquiry, Plaintiff may reply in the negative as to any question as to whether he has been accused of sexual misconduct or as to any similar question.

2. award plaintiff compensatory damages in an amount to be determined at trial, but not less than \$75,000.00 for mental anguish, loss of trust, severe emotional distress, serious mental injury, injury to reputation, past and future economic loss, deprivations of due process, loss of educational opportunities, loss of future career prospects, and other injuries proximately caused by the wrongful conduct of defendant;

3. award plaintiff his attorney's fees, disbursements, and costs pursuant to the provisions of 42 U.S.C. § 1988(b) (relating to Title IX); or pursuant to any other statute or common law doctrine providing for the award of attorney's fees, disbursements, and/or costs;

4. award prejudgment interest; and grant such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims so triable.

Dated: 6/19/2019


John Doe

Dated: 7-16-19

MCGRAW LAW FIRM, P.A.



Beau D. McGraw, I.D. No.: 31190X
Attorney for Plaintiff
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Winter Storms

When winter storms create hazardous driving conditions, employees may arrive late or leave early with the permission of their supervisors. Each department shall establish its own procedures for doing so. Floating holiday, vacation, or make-up hours may be arranged by the employee in order to receive pay for lost time. Make up hours must be worked within the same pay week as the lost time. Normally, make-up time resulting in overtime will be limited to the dollar value of the lost time pay.

The decision to close the College in the morning will be announced on KYMN, KDHL, KSTP, KARE 11, and WCCO by 7:30 a.m., if possible. Closings during the day will be announced by campus e-mail and/or telephone.

Last revised December 7, 2005

For Faculty, Staff

Last Reviewed: Aug 10th, 2015

Maintained by Human Resources

Policy Against Sexual Misconduct

I. Statement of Philosophy

Carleton College is committed to:

- fostering a safe environment, free of sexual misconduct in any form. We expect community members to engage in relationships and sexual interactions that are characterized by consent. Individuals who engage in behaviors that violate Carleton's Policy Against Sexual Misconduct are held responsible for their actions.
- responding to reports of sexual misconduct through established procedures that are comprehensive in scope, supportive in approach, and fair in execution. Support will be provided before, during, and after any adjudication, recognizing that for all parties affected by an instance of sexual misconduct—alleged or proven—the experience is emotionally, socially, and intellectually demanding. Retaliation against any person participating in the investigation or adjudication of a report of sexual misconduct is strictly prohibited.
- taking seriously the fact that the best process to address sexual misconduct should begin before any sexual misconduct has occurred, with prevention through education, and should conclude with intentional measures to work towards healing individuals and community.

II. General Provisions and Application

Carleton College prohibits all forms of sexual misconduct, including sexual assault, sexual harassment, sexual exploitation, stalking, intimate partner violence, and other sexually inappropriate conduct.

Sexual misconduct can be committed by a person of any gender against a person of any gender. Sexual misconduct can be committed by friends, current or former intimate partners, acquaintances, or non-acquaintances.

The Policy Against Sexual Misconduct applies to all Carleton faculty, staff, students, and visitors. The

Policy applies in connection with any College program, whether on or off campus, including academic, educational, extra-curricular, athletic, residential, employment (including work-study), and other College activities and programs.

Carleton College is committed to creating a community free of sexual misconduct, to providing avenues for those affected by sexual misconduct to obtain assistance, and to providing clear and fair complaint and investigation procedures.

Carleton College encourages individuals who have experienced any form of sexual misconduct to make a prompt report to the College. Carleton College also encourages individuals who have experienced sexual assault to pursue criminal charges. The College will provide information about available options, including information about filing an internal complaint or pursuing criminal charges. A criminal charge and an internal complaint can be pursued at the same time. Detailed information about complaint and investigation procedures to implement this Policy can be found here.

The College will provide support to all individuals in the Carleton Community involved in reports of sexual misconduct, including the internal College complaint process and/or the criminal charge process. The College also recognizes that pursuing a complaint procedure or criminal charges may not be steps that every person who makes a report wants to take; the College recognizes an individual's right to decline to pursue formal action.

Carleton College has also adopted a Statement on Consensual Relations that applies to faculty and staff. Students, faculty members, and staff members should understand that apparently consensual sexual relationships, particularly those between individuals of unequal status, may also violate this Policy. Anyone who engages in a sexual relationship with a person over whom they have any degree of power or authority must understand that the validity of the consent involved can and may be questioned. The College particularly recognizes the abuse potentially inherent in sexual relationships between faculty members and students and between staff supervisors and their student employees. (See Statement on Consensual Relations, Carleton College Faculty Handbook and Staff Handbook.)

III. Prohibited Conduct

This section defines conduct prohibited by the Sexual Misconduct Policy.

Sexual Assault

Sexual assault is intentional sexual contact with another person without that person's consent.

Sexual contact includes, but is not limited to, intentional touching of the genitals, buttocks, or breasts; coercion to force someone else to touch one's genitals, buttocks, or breasts; penetration of an orifice (anal, oral or vaginal) with the penis, finger, or other object in a sexual manner; or sexual intercourse. Sexual contact can occur over clothing.

Consent means the mutual understanding of words or actions freely and actively given by two informed people that a reasonable person would interpret as a willingness to participate in mutually agreed upon sexual activity.

- Consent is not effective when force, threat, or coercion is used
- Consent is not effective if the recipient party is incapacitated, asleep, or unconscious

- Silence or non-communication should never be interpreted as effective consent
- Consent to one type of sexual activity does not imply consent to other types of sexual activity
- Past consent is not future consent
- Consent can be withdrawn at any time

Incapacitation is the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. For example, a person may be incapacitated when asleep or under the influence of alcohol or drugs to an extent that the person is not capable of making a knowing decision. Knowledge of incapacity is evaluated based on a reasonable person standard. Accordingly, if a person has sexual contact with someone whom that person knows to be, or whom a reasonable person would know to be, incapable of making a rational, reasonable decision, that contact violates this policy.

Being intoxicated or under the influence of any substance at the time of sexual contact is never an excuse for violating this Policy.

Sexual Harassment

Sexual harassment is unwelcome verbal, non-verbal, or physical conduct of a sexual nature or based on someone's gender or gender expression that is:

1. severe or pervasive, and
2. objectively offensive, and
3. creates a hostile educational or work environment.

The conduct must be unwelcome to the recipient, and a reasonable person in the recipient's position must also perceive the conduct as constituting sexual harassment.

Sexual harassment includes "quid pro quo" harassment, which occurs when submission to conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an employment or educational benefit, or is a factor in decisions affecting an individual's employment or education.

A hostile educational or work environment occurs when conduct or communication has the effect of substantially interfering with an individual's employment or education. Even a single, severe incident can create a hostile educational or work environment. To determine whether a hostile environment has been created, a variety of factors related to the severity, persistence, or pervasiveness of the conduct will be considered.

Unwelcome conduct is conduct that the recipient did not request or invite and considers to be undesirable or offensive. Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating.

- Participation in the conduct or failure to complain does not always mean that the conduct was welcome
- The fact that some conduct was welcome does not necessarily mean other conduct was welcome
- The fact that conduct was requested or invited on one occasion does not mean that the

The essential importance of academic freedom is recognized in applying this policy. But a claim of academic freedom is not a defense to actions intended to harass or actions that would be understood to be harassing by a reasonable person. Carleton College believes that ideas, creativity, and free expression thrive—and indeed can only exist for students, faculty members, and staff members—in an atmosphere free of sexual harassment or coercion.

Stalking

Stalking is a form of sexual misconduct when it is gender based or is related to an intimate partner relationship. Stalking means engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person to (a) fear for his or her safety or the safety of others, or (b) suffer substantial emotional distress.

Stalking may include persistent unwanted attempts to contact the person by phone, electronic communication, or regular mail; vandalizing the person's property or leaving unwanted items for the person; and/or repeatedly appearing at the person's classroom, residence, or workplace without permission.

Sexual Exploitation

Sexual exploitation occurs when a person abuses or exploits another person's sexuality, without that person's consent.

Sexual exploitation includes, but is not limited to, recording images or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent; distributing images or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted did not consent to and objects to such disclosure; and viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.

Intimate Partner Violence

Intimate partner violence is the use of physical violence, coercion, threats, intimidation, isolation, humiliation, or other forms of emotional, psychological, sexual, or economic abuse used to control a partner in an intimate relationship.

Intimate partner relationships are defined as short or long-term relationships (current or former) between persons intended to provide some emotional/romantic and/or physical intimacy.

Intimate partner violence can be a single act or a pattern of behavior in relationships. Intimate Partner Violence is sometimes referred to as **Domestic Violence** or **Dating Violence**.

Sexually Inappropriate Conduct

Sexually inappropriate conduct includes unwelcome sexual conduct that may not rise to the level of sexual harassment. Conduct that may be considered sexually inappropriate may be isolated behavior not sufficiently serious to be sexual harassment under this policy.

Sexually inappropriate conduct may include, but is not limited to, crude, obscene, or sexually offensive gestures or behavior, or unwelcome sexual comments or communication. For purposes of this definition, communication may be oral, written, or electronically transmitted.

Retaliation

Retaliation includes, but is not limited to, abusive, coercive, violent, threatening, intimidating, discriminating or similar actions taken against an individual because of that individual's participation in the sexual misconduct process. Retaliation, by anyone, against a person involved in a sexual misconduct process under this Policy—including the complainant, the respondent, witnesses, advisers, investigators, panel members, or anyone else participating in the process—or against anyone who pursues legal action alleging sexual misconduct—is prohibited and will not be tolerated.

IV. Reporting Requirements

Faculty and Staff

All faculty and staff (other than Confidential Campus Resources) who learn of possible violations of this policy are required to report that information either directly or through a Community Concern Form to the Title IX Coordinator or the Title IX Deputy for Faculty and Staff.

While reporting is an obligation for all faculty and staff other than confidential resources, in responding to a report, the College will be guided by the goal of empowering the individual who has been subject to the misconduct and allowing that individual to retain as much control over the process as possible. However, no employee (other than Confidential Campus Resources) can or should promise absolute confidentiality.

Confidential Campus Resources

Carleton's counselors and health service providers at the Student Health and Counseling Center and clergy who serve as College Chaplains are the college's Confidential Campus Resources. Individuals involved in sexual misconduct matters may seek confidential support from these resources, who will maintain complete confidentiality of all information shared with them. Confidential Campus Resources have a responsibility to report non-personally identifiable information about sexual misconduct for the purpose of statistical reporting, as required by federal law.

Students

Resident assistants are required to report incidents of possible sexual misconduct through a Community Concern Form when relevant information comes to their attention through their work as resident assistants. Resident assistants are required to include the names of involved students.

Student staff members in the Division of Student Life, other than resident assistants, are required to report incidents of possible sexual misconduct through a Community Concern Form, but may choose to omit the names of involved students. These student staff members may choose to share more information, including names, to ensure that affected students receive appropriate support and attention.

Other students do not have an obligation to report sexual misconduct, but are encouraged to consider sharing information about sexual misconduct with the Title IX Coordinator to ensure that affected students receive appropriate support and attention.

V. Related Information

Privacy and Confidentiality

Carleton College will maintain the privacy of all parties involved with a sexual misconduct allegation to the fullest extent possible. Maintaining privacy means that only individuals who need to know information about a case will have access to it and that all information will be handled with sensitivity. Publicly available records will not identify the parties in a formal or informal complaint process.

Record Retention

Records related to sexual misconduct allegations and investigations will be retained by the College for seven years.

Limited Immunity for Alcohol and Drug Violations

The College seeks to remove barriers to reporting incidents of sexual misconduct. An individual who has been drinking or using drugs at the time of an incident of sexual misconduct may be hesitant to make a report or participate in an investigation because of potential consequences for their own conduct. No student who, in good faith, reports an incident of sexual misconduct or participates in an investigation of sexual misconduct will be subject to disciplinary action for their own personal consumption and possession of alcohol or other drugs related to that incident. The College may recommend educational intervention, assessment, or counseling for alcohol or other drug use when appropriate.

Prevention Education

In an effort to prevent and eliminate sexual misconduct, the College will maintain an informative Web site about the sexual misconduct policy, procedures, prevention, and response, and will distribute information about the sexual misconduct policy and procedures to students, staff members, and faculty members annually. Peer leaders and professional staff members in advisory roles will receive additional training in preventing and responding to incidents of sexual misconduct. This training will include information to empower bystander intervention, including safe and positive options to prevent harm or intervene in risky situations. Individuals designated as part of the Sexual Misconduct Support and Response Team will receive extensive and ongoing training, as will those involved in administration and adjudication of the sexual misconduct complaint process.

In addition to these trainings, the College community is informed about issues surrounding sexual misconduct through proactive and prevention education efforts.

Sexual Misconduct Involving Minors

Additional requirements may apply when an incident of sexual misconduct involves a minor. A separate College policy applies to minors on campus. See the Minors on Campus Policy (under development).

Related Legal Definitions

When sexual misconduct as defined in this Policy occurs at Carleton, the standards of the community are violated. Depending on the type of misconduct, state and federal law may also be violated by conduct that violates College policy. State law definitions of consent, sexual assault, domestic violence, dating violence, and stalking can be found on the Minnesota Coalition Against Sexual Assault [Web site](#).

For further information, please see the Sexual Misconduct Prevention and Response Web site: https://apps.carleton.edu/dos/sexual_misconduct/policy_procedure/

For [Faculty](#), [General Public](#), [New Students](#), [Prospective Students](#), [Staff](#), [Students](#)

Not Reviewed

Maintained by Dean of Students

Presence of Children and Minors on Campus and Participating

Student Sexual Misconduct Resolution Process

This document explains the procedures the College follows in investigating and adjudicating reports of Sexual Misconduct (as described in the Sexual Misconduct Policy) when both the complainant and the respondent are students.

This document uses the term “complainant” to refer to any person who may have been or was subject to Sexual Misconduct, even if they choose not to enter a Resolution Process. This document uses the term “respondent” to refer to any person who could potentially be or has been charged with Sexual Misconduct.

A. Reporting Incidents of Sexual Misconduct.

The College encourages anyone who has experienced Sexual Misconduct to report the incident to the College. The College takes all reports of Sexual Misconduct seriously and will take action in response to these reports. Anyone may report Sexual Misconduct to the College by:

- Contacting the Title IX Coordinator: 507-222-4028
- Completing a Community Concern Form:
http://apps.carleton.edu/dos/sexual_misconduct/get_help/reporting/ccf/
- Contacting Security Services: 507-222-4444 (for immediate incident response)

Reports can be made by telephone, via email or in person.

During an initial conversation regarding a report of Sexual Misconduct, a reporter need only share names and detailed information if they choose.

Community members who are not ready to make a report to the College may choose to discuss an incident or concern, on a confidential basis, with a Confidential Support Person (Student Health and Counseling practitioners and Chaplains). For additional information about Confidential Support Persons, see http://apps.carleton.edu/dos/sexual_misconduct/get_help/support/on-campus_resources/confidential_carleton_resources/.

The College has an obligation to take appropriate action when it becomes aware of a Sexual Misconduct allegation. If a College employee, other than a Confidential Support Person, has information about a potential incident of Sexual Misconduct, the employee has a responsibility to report that information.

The College makes every effort to safeguard the identities of anyone who reports Sexual Misconduct or seeks help. Dissemination of information relating to any case involving allegations of Sexual Misconduct will be limited to persons the College determines have a need to know.

There are no time limitations for reporting or seeking resolution of a Sexual Misconduct matter.

However, the College's ability to effectively investigate and respond to reports may be limited by the passage of time. Thus, the College encourages prompt reports.

A report of Sexual Misconduct becomes a Sexual Misconduct complaint only when a complainant or the College decides to pursue an Adjudicated Resolution Process under Section C.2 below.

B. Responding to a Report

1. Response. The Title IX Coordinator is primarily responsible for coordinating responses to reports of possible Sexual Misconduct, determining interim measures, directly overseeing the Resolution Process, as described in Section C, and coordinating possible remedial actions or other responses designed to reasonably minimize the recurrence of the alleged conduct as well as mitigate its effects. The Title IX Coordinator also assists in answering any other questions related to the Sexual Misconduct Policy or these procedures. The Title IX Coordinator will ensure prompt, fair, and impartial resolution of all cases.

The College will treat all parties connected with a Sexual Misconduct report with dignity. The College will not suggest that a complainant is at fault or should have done something differently to avoid an incident.

Most cases of Sexual Misconduct will be resolved within 60 days; however, a longer period may be needed in cases that require more time to complete the resolution. In the event that the resolution exceeds the 60-day time frame, the College will notify all parties of the reason for the delay and the expected adjustment in time frames.

The College will advise students that filing a Sexual Misconduct report is not a substitute for legal action. In cases where Sexual Misconduct may constitute a crime as well as a violation of College policy, the College encourages individuals to report the alleged Sexual Misconduct to both the College as set forth in this policy and to law enforcement authorities. An individual may be assisted by College authorities in notifying law enforcement or obtaining a legal no contact order if the individual chooses. The College also recognizes the right of individuals to decline to notify law enforcement authorities.

The College will also provide all parties complete and prompt assistance, at the direction of law enforcement authorities, in obtaining, securing, and maintaining evidence in connection with a Sexual Misconduct incident. The College will also provide all parties assistance in preserving materials relevant to campus disciplinary proceedings.

The filing of a Sexual Misconduct report under College policy is independent of any criminal investigation or proceeding, and, except in cases where the College determines that a temporary delay is necessary while the criminal investigators are gathering evidence, the College will not wait for the conclusion of any criminal proceedings to respond to a report and take needed interim or resolution measures. Making a report to law enforcement is not necessary for the College to proceed with a resolution.

Students will be advised that retaliation for making a report is strictly prohibited, that any retaliation should be promptly reported, and that the College will take appropriate action if retaliation occurs.

If the College obtains information about possible Sexual Misconduct, the College may respond, and may commence a Resolution Process, even in the absence of a specific complainant.

2. Support. Fair and responsible support services will be provided to all parties. Students who wish to seek support after an incident of Sexual Misconduct, want to discuss options for addressing an incident of Sexual Misconduct, are considering entering the Resolution Process, or have any questions about the Resolution Process, should talk to a member of the Title IX Lead Team, a Sexual Misconduct Support [SMS] Adviser, or a Confidential Support Person. Contact information for these resources can be found at go.carleton.edu/sexual_misconduct. These resources can also provide information regarding campus and community counseling, health care, mental health care, victim advocacy services, legal assistance, visa and immigration assistance, student financial aid assistance, and other support services. Additional information on these matters is available at http://apps.carleton.edu/dos/sexual_misconduct/get_help/.

3. Consideration of Options. After a report of Sexual Misconduct, the Title IX Coordinator will meet with the complainant to discuss how the complainant wishes to proceed – whether the complainant wishes to pursue an Adjudicated Resolution Process, prefers to resolve the allegation with a Non-Adjudicated Resolution Process, or does not wish to pursue a Resolution Process of any kind.

As outlined in section C.2, if the complainant wishes to proceed with an Adjudicated Resolution Process and, after an investigation, the Title IX Coordinator determines there is sufficient information to proceed, then a hearing will be conducted.

If the complainant wishes to proceed without an Adjudicated Resolution Process, the Title IX Coordinator may elect to initiate a Non-Adjudicated Resolution Process, as outlined in section C.1. However, a complainant (a) will never be required to work out a problem or resolve an issue directly with the respondent; and (b) will be advised of the right to end the Non-Adjudicated Resolution Process at any time and to begin to pursue an Adjudicated Resolution Process. Mediation is not an appropriate method, even on a voluntary basis, for resolving sexual assault allegations. Both the complainant and the respondent must mutually consent to the use of a Non-Adjudicated Resolution Process. The Title IX Coordinator may determine that a Non-Adjudicated Resolution Process is not in the best interest of the involved parties or the College.

Even if the complainant does not wish to pursue resolution, requests that no action be taken, or requests to remain confidential or to not participate in the process, the College has an obligation to respond to reports of Sexual Misconduct. The College's ability to respond may be limited if a complainant wishes to remain anonymous and/or chooses not to participate in the process. No guarantees can be made to a complainant regarding absolute confidentiality, but the College will consider and honor a request for confidentiality to the extent reasonably possible, consistent with

its obligation to take appropriate action in response to a report of Sexual Misconduct or information that the College may otherwise have regarding alleged Sexual Misconduct. A student will not be required to make a complaint if the student is not ready to do so.

On some occasions, the College may need to move forward with a response regardless of the complainant's preference. A request for confidentiality or no action will be considered in the dual contexts of 1) the College's commitment to providing a safe living and learning environment free from Sexual Misconduct; and 2) the right of respondents to be informed of the allegations against them. Some level of disclosure may be necessary to ensure a complete and fair investigation, although the College will comply with requests for confidentiality to the extent possible. The College will consider various factors, including the following, in deciding the extent to which disclosure of information may be necessary: the seriousness of the alleged Sexual Misconduct, the complainant's age, the respondent's age, whether there have been other complaints of Sexual Misconduct against the same respondent, the ability to conduct an investigation without revealing identifiable information, and the extent of any threat to the College community.

4. Response When No Complainant is Identified. In some circumstances, the College acquires information about a potential violation of the Sexual Misconduct Policy through a Community Concern Form or other source that identifies a potential respondent, but does not identify the person who was subject to the conduct. In this situation, the Title IX Coordinator may take a variety of steps, including meeting with the initial reporter and meeting with the potential respondent, to determine an appropriate response. The College may be limited in its ability to respond to an anonymous report unless sufficient information is furnished to enable the College to conduct a meaningful and fair inquiry.

5. Advisers. Throughout a Resolution Process, students may each have an adviser of their choice to be present and provide support. An adviser may be an attorney or any member of the Carleton or external community. The role of an adviser is to serve as a support to a student, not to act as a student's representative, spokesperson, or advocate in the Resolution Process.

Students have the option to choose a SMS Adviser to support and guide them through the Resolution Process. SMS Advisers are members of the College staff who have volunteered serve as advisers to students and been trained on the Resolution Process. For more detailed information about SMS Advisers and the role of advisers in the Resolution Process, see Adviser Guidelines and Expectations document available at [this link](#).

6. Interim Measures. The Title IX Coordinator or a designee may issue interim restrictions, including, but not limited to, the following: no-contact or stay away orders between the complainant and the respondent; interim suspension; temporary exclusion from areas of campus; removal from or relocation to another residence hall; changes in academic/course schedules; or limiting participation in certain events, gatherings, or activities.. Interim restrictions should not be construed to suggest that any decision has been made about the merits of the case.

Accommodations may also be provided to individuals involved, regardless of whether a Resolution Process is instituted or whether an individual reports to law enforcement.

Accommodations may include academic/course schedule changes; academic assistance; campus employment schedule changes; housing reassignments; safety escorts; safety/crime prevention briefings; and other protective or safety measures.

Interim restrictions and accommodations are considered on a case-by-case basis by the Title IX Coordinator. To request interim restrictions or accommodations, individuals should contact the Title IX Coordinator.

The College will maintain as confidential any interim restrictions or accommodations put in place following allegations of Sexual Misconduct, to the extent that maintaining such confidentiality would not impair the ability of the College to put such measures in place.

Interim restrictions may be appealed to the Dean of Students or their designee. Appeals of interim restrictions must be submitted in writing to the Dean of Students within 5 business days from the day the parties are notified about the interim restriction. The Dean of Students will review the materials within 5 business days of receipt of the appeal and may affirm the original restriction, modify the restriction, which may be of greater or lesser severity, or rescind the original restriction. The Dean of Students' determinations on any interim restrictions are final and not appealable. Both parties will receive simultaneous written notice of the outcome of the appeal. Interim restrictions remain in place during this appeal period.

C. Resolution Process

The College is obligated to follow up on and resolve all reports of Sexual Misconduct in a timely, fair, and impartial manner. The Resolution Process will proceed regardless of whether either party chooses to withdraw from the College or goes on leave after a report has been made to the College. Silence in response to an allegation will not be viewed as an admission of the allegation, but may leave the allegations undisputed. Parties will not be required to repeat their account of the incident multiple times.

At any time, a party may decline to provide information or participate further in a Resolution Process. In that event, the College will review the matter based on all of the other information gathered.

During a Resolution Process, students will be provided timely notice of meetings at which the complainant or respondent may be present. The complainant and respondent will also be provided timely and equal access to any information that is available during the Resolution Process.

1. Non-Adjudicated Resolution Process

If a student reports Sexual Misconduct and prefers not to enter an Adjudicated Resolution Process, the student may in some situations choose to address the matter through a Non-Adjudicated Resolution Process instead. The Title IX Coordinator will determine whether a Non-Adjudicated Resolution Process is appropriate, as detailed in Section B.3, above. Under the Non-Adjudicated Resolution Process, the College will only conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the College, and the College community.

Either the complainant or the respondent can request to end a Non-Adjudicated Resolution Process at any time and instead proceed to an Adjudicated Resolution Process. The College also always has the discretion to end a Non-Adjudicated Resolution Process and to initiate an Adjudicated Resolution Process.

The specific form of a Non-Adjudicated Resolution Process will vary from case to case, but could include the following options:

a. Facilitated Communication. Under this option, the Title IX Coordinator or their designee will work individually with the complainant and respondent to address the situation and design a resolution. Possible measures include a no-contact agreement between the parties; development of an agreement between the Title IX Coordinator and the parties regarding remedial measures; provision of other accommodations requested by the complainant; or conversation between the Title IX Coordinator and the respondent to communicate the concerns about that person's conduct.

b. Indirect Action. Under this option, the Title IX Coordinator or their designee may provide educational programs, including information about the College's Sexual Misconduct Policy, to specific groups, organizations, or residential communities, or arrange to disseminate information about the College's Sexual Misconduct Policy through channels designed to reach the respondent.

2. Adjudicated Resolution Process

a. Investigation. Upon initiation of a complaint, the Title IX Coordinator will ask the College investigator to pursue an investigation.

The investigator will conduct a prompt, thorough and impartial investigation and prepare a written investigative report. In most circumstances, the investigator will meet individually with the complainant and respondent at least once during the investigation. The investigator may also meet with other persons who may have information about the incident, and may review e-mails, text messages, photographs, video surveillance and/or other physical, documentary, or other evidence as appropriate and available. The College will provide an opportunity during the investigation for both the complainant and respondent to advise the investigator of any witnesses they believe should be interviewed and other evidence they believe should be reviewed by the investigator.

At the conclusion of the investigation, the investigator will submit a written investigative report to the Title IX Coordinator setting forth the information that was collected. The investigator will also compile and submit to the Title IX Coordinator any documents or other evidence that will be provided to the CBSM panel. The Title IX Coordinator may ask clarifying questions of the parties or may ask the investigator to conduct additional investigation if determined necessary.

b. Charging. The Title IX Coordinator will review the investigative report and determine whether there is sufficient information to support charging a student with a violation of the Sexual Misconduct Policy.

i. If the Title IX Coordinator determines that there is insufficient information to support charging a student with a violation of the Sexual Misconduct Policy, the student will not be charged.

ii. If the Title IX Coordinator determines that there is sufficient information that a student may have violated the Sexual Misconduct Policy, then within 5 business days after the final investigative report is submitted, a written Notice of Charges of Policy Violation (Notice of Charges) will be provided to the respondent and the complainant with summary information that supports the charge(s).

c. Acceptance of Responsibility. Within 5 business days after receipt of the Notice of Charges, the respondent has an opportunity to accept or not accept responsibility for the charge(s).

i. If a respondent is charged and accepts responsibility for having violated the Sexual Misconduct Policy, the Title IX Coordinator will forward the case to the Community Board on Sexual Misconduct [CBSM] panel for determination of sanctions only.

ii. If a respondent is charged but does not accept responsibility for having violated the Sexual Misconduct Policy, the Title IX Coordinator will forward the case to the CBSM panel for determination of both responsibility and sanctions.

d. Adjudication Hearing

i. Adjudicator. The CBSM hears all cases that proceed to an Adjudication Hearing. CBSM members receive annual training on issues related to sexual harassment, sexual assault, intimate partner violence, stalking, and how to conduct an investigative and decision-making process that protects the safety of all and promotes accountability.

ii. Hearing Goals. During a CBSM hearing, a CBSM panel determines whether there has been a violation of the College's Sexual Misconduct Policy. The hearing is intended to facilitate a decision based on information gathered during the investigative process and presented at the hearing. It is not intended to be an adversarial proceeding. The hearing is not a legal process, and it is not intended to mimic or substantially duplicate a civil or criminal trial.

The goals of the hearing are 1) to allow both the complainant and the respondent the opportunity to present their experiences and discuss the investigative report; 2) to allow an impartial panel to ask questions, consider the information presented, and decide whether a Sexual Misconduct Policy violation has occurred; and 3) if a violation is found, to allow the CBSM the opportunity to ask questions relevant to sanctions and determine appropriate sanctions for a violation.

iii. Preparation for the Hearing. The Title IX Coordinator or a designee will arrange the administrative details for the hearing, including: 1) selecting the members of the CBSM panel to hear and decide the complaint; 2) arranging a time and place for the hearing; and 3) making the investigative report and accompanying documentary or other evidence available to the panel members and to the parties.

iv. The Panel. In preparation for a hearing with a CBSM panel, the Title IX Coordinator selects a three-person panel from the full roster of trained board members to hear and adjudicate the complaint. The panel will ordinarily consist of one faculty, one staff, and one student representative.

Before the panel is selected, the Title IX Coordinator will provide to the complainant and respondent the list of CBSM members available to serve on the panel. The complainant and respondent then have 48 hours to submit a written objection if the party believes that any prospective panel member has a conflict or is otherwise unable to fairly evaluate the information presented. After the panel is selected, the Title IX Coordinator will also inform the panel members of the parties' identities to determine whether any panel member has a relationship with either party that would affect their ability to decide the case impartially. The Title IX Coordinator will evaluate any objection by a party or potential conflict identified by panel members and determine which board members will serve on the panel.

v. Role of the CBSM Chair in the Hearing. The College Title IX Coordinator ordinarily serves as the CBSM chair. The chair's role is to ensure that procedures are followed and that Title IX requirements are met. The chair facilitates and is present for all phases of the hearing, but does not take a substantive role in the deliberations or vote following deliberations. The chair will resolve all questions that arise during the hearing, including but not limited to procedural issues and issues regarding the propriety or relevance of specific questions, arguments, and information presented.

The CBSM chair will also seek to ensure an orderly and fair exchange of information and perspectives during the hearing. If anyone attending the hearing acts without appropriate respect or decorum, the chair may ask them to leave the hearing.

In consultation with the CBSM chair, the panel will determine whether it is necessary for the panel to hear and/or question particular witnesses.

vi. Role of Advisers. The adviser's role at the hearing is to offer support and assistance in a manner that does not disrupt the proceedings. Advisers will not be permitted to offer written or oral information to the panel. Students will be responsible for presenting their own statements and for answering the panel's questions. For more detailed information about the role of advisers, see the Advisers' Role and Responsibilities document available at [this link](#).

vii. Role of Additional Support Individuals. In addition to an adviser, each complainant and respondent may have up to four other individuals present in a nearby support room during a hearing. These support individuals may not be present in the hearing room or participate in the hearing in any way.

viii. Hearing Procedures. Hearings are private and are not open to members of the College community or the public. Present during a hearing are the three CBSM panel members, the CBSM chair, the complainant, the complainant's adviser (if any), the respondent, and the respondent's adviser (if any). Any additional persons in attendance must be approved by the CBSM chair. During the hearing, complainants and respondents will be offered the opportunity to present prepared initial statements orally. The panel will then have the opportunity to ask the complainant and respondent questions. After the panel has had the opportunity to ask questions, the complainant and respondent will be offered the opportunity to make final oral comments.

At either party's request, the hearing can be set up so that the complainant and respondent will have minimal interaction during the hearing or will not be in the hearing room at the same time.

ix. Information Considered by the CBSM Panel. In reaching a decision, the panel will only consider information included in the investigative report or presented at the hearing, pertinent College policies, and other documents or materials shared with the panel by the Title IX Coordinator. A party's decision to not participate in an Adjudication Hearing does not preclude a determination regarding a complaint. Silence in response to an allegation will not be viewed as an admission of the allegation, but may leave the allegations undisputed.

Information about unrelated past behavior of the complainant and/or respondent, including the sexual history or dress of either party, will typically be excluded from consideration.

x. Determination of Violation or No Violation. Following the presentation of information at the hearing, the CBSM panel will determine whether a violation of the Sexual Misconduct Policy occurred. The CBSM panel will deliberate in private. In reaching a decision, the panel will apply a **preponderance of the evidence standard**, and will conclude that a violation occurred if it is "more likely than not" that a violation occurred. The panel will reach a decision by majority vote.

The chair will orally report the panel's decision to the complainant and respondent before the commencement of the sanctioning phase of the hearing.

xi. Sanctioning. If the panel determines that the respondent violated the College's Sexual Misconduct Policy, the hearing will continue. The panel will then allow both the complainant and the respondent to express their views orally about appropriate sanctions. The panel will then deliberate further to determine appropriate sanctions.

In determining sanctions, the panel's objective will be to ensure campus health and safety by preventing the recurrence of problematic behavior and addressing its effects, including the effects of the violation on the complainant. The panel may consider a variety of factors in determining sanctions, including, but not limited to, the type of misconduct, the wishes of the complainant, the weight of the evidence, and the respondent's disciplinary record. The sanctioning decision will also be informed by the degree to which the behavior was intentional, irresponsible, or without knowledge.

The complete disciplinary record of the respondent will be made available to the panel by the Dean of Students Office for use during sanctioning.

Possible sanctions include, but are not limited to:

- Dismissal from the College
- Suspension for one or more terms, with or without conditions for return
- Disciplinary Probation
- No Contact or Limited Contact Order
- Chemical Health Assessment
- Restricted Campus Access
- Restricted Course Enrollment
- Change of Housing
- Warning
- Required education or training

Sanctions may be combined. A majority vote of the CBSM panel is required for all sanctions.

After the panel has reached a decision about sanctions, the chair will orally communicate the decision to the complainant and respondent, each separately.

The sanctions imposed by the CBSM do not go into effect until the appeal period has passed.

The Title IX Coordinator will follow up to ensure compliance with the sanctions determined by the CBSM panel and will maintain the resulting disciplinary record in accordance with the College Student Records policy.

xii. Record of the Hearing

Hearings will be audio recorded by the College for use in the event of an appeal. No other recordings are allowed. The recording and any notes taken during the hearing by any panel members, including the CBSM chair, will be maintained in accordance with the College's Student Records Policy. The Title IX Coordinator will maintain the resulting disciplinary record in accordance with the College Student Records policy.

xiii. Notice of Outcome

The parties will also receive simultaneous formal written notice of the hearing outcome. The College will strive to provide the written notice of outcome to the parties within two business days following the hearing. In some cases, more time may be required.

The determination of the CBSM panel may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final.

e. Appeal

Both parties have the right to appeal the outcome on any of the following grounds:

- procedural errors substantially impacted the final decision;
- relevant new information has come to light that was not available at the time of the hearing and would have substantially affected the panel's decision;
- the sanction is inconsistent with the seriousness of the offense.

A Statement of Appeal must be made in writing to the Title IX Coordinator within 5 business days of the date that the party receives written notification of the panel's decision and the sanctions imposed, if any. Any sanctions imposed by the CBSM are held in abeyance until the deadline for submission of a Statement of Appeal has passed. Once a student has submitted a Statement of Appeal, the sanction(s) will continue to be held in abeyance pending final appeal decision outcome.

The appeal adjudicator is the Dean of Students. In the event the Dean of Students is unavailable or has a conflict, the Vice President/Treasurer will act as the adjudicator. The appeal adjudicator determines the merits of the appeal and determines an appropriate remedy, if any.

Within 24 hours of receiving a Statement of Appeal, the Title IX Coordinator will notify the non-appealing party that an appeal has been filed and will communicate the basis of the appeal. The Title IX Coordinator will provide a copy of the Statement of Appeal to the non-appealing party. If the non-appealing party wishes to respond, they will have 3 business days to submit a written response to the appeal adjudicator.

The appeal adjudicator will act upon an appeal within a reasonable time, normally 5 business days after their receipt of the Statement of Appeal and any written response to the statement of

appeal. After the appeal is decided, the appeal adjudicator will notify both parties concurrently in writing of the decision. Decisions of the appeal adjudicator are the final institutional response and may not be appealed.

AT&T

5:01 AM

69%



Tweet



Laura Anne Haave

@lahaave



You know what's really therapeutic
when you're pissed off about sexual
violence? Finely mincing a cucumber.
With deadly precision.

1/22/15, 4:26 PM

2 Retweets 8 Likes



 **Crista Anne**  @pinkness · 1/22/15



Replying to @lahaave

@lahaave Yessss. Yes it is,



Laura Anne Haave @lahaave · 1/22/15



@pinkness The pieces. They are so small.



Tweet your reply





May 3, 2017

[REDACTED]
Student Mail

Dear [REDACTED]

The following mutual No Contact Order (NCO) has been developed between you and [REDACTED]. This is not a disciplinary measure, but instead a mechanism to keep distance between the two of you.

You and [REDACTED] are not to have any contact with each other. "Contact" includes but is not limited to direct or indirect communication in person, through others, by email, text messages, social media-based messages and postings, and other forms of communication.

Additionally, you should not enter [REDACTED] since that is [REDACTED] place of residence.

No Contact Orders are mutual. In other words, any student(s) on one side of an NCO is prohibited from contacting any student(s) on the other side of the NCO. For more information about NCOs, please see this website: https://apps.carleton.edu/campus/dos/conductprocess/no_contact/

Any violations of NCOs are subject to disciplinary action under the College's policies. Additionally, the College prohibits retaliation of any kind. Retaliation includes but is not limited to abusive, coercive, violent, threatening, intimidating, discriminating or similar actions taken against an individual.

This is a private matter which should not be shared broadly with others, but talking with people for support is to be expected.

This mutual No Contact Order is in effect through June 2018, when [REDACTED] graduates.

If you have any questions, please let me know.

Sincerely,

Amy Sillanpa
Assistant Dean of Students
Director of Community Standards
Interim Title IX Coordinator

**Re: notification of complaint**

3 messages

Amy Sillanpa <asillanp@carleton.edu>

Thu, May 11, 2017 at 6:34 AM

To: [REDACTED]
Cc: [REDACTED]
[REDACTED]

Thank you [REDACTED] I've cc'ed your parents and [REDACTED] so they can have the information I sent you below, as well as the attached documents. Please set up a time soon for us to meet.

Amy

On Wed, May 10, 2017 at 4:29 PM, [REDACTED] wrote:

Amy,

I would like for my parents to be included on future emails. I plan on calling the office once I figure out my schedule these next few days.



On May 10, 2017, at 3:40 PM, Amy Sillanpa <asillanp@carleton.edu> wrote:

Dear [REDACTED]

I am writing to inform you that [REDACTED] has filed a complaint against you. She alleges that you are in violation of the sexual misconduct policy of the College from an incident on April 28, 2017. The College will need to move forward with an investigation.

I would like to meet with you to explain our process and what to expect. Attached are two documents. They are the first conversation check-list, which I use at a first meeting with a student and are the topics we will be discussing. And our more detailed version of what our process is at Carleton. These documents can also be found on our website here: https://apps.carleton.edu/dos/sexual_misconduct/policy_procedure/procedures/

Our website has more information about our policies and process as well.
https://apps.carleton.edu/dos/sexual_misconduct/

For our meeting, you are welcome to bring [REDACTED] your attorney. I will not expect you to answer any questions about [REDACTED] allegations during this meeting. The purpose is to provide information to you.

Students can select an adviser to have available to them during the process. Please let me know if you plan to have [REDACTED] serve as your adviser, someone else of your choosing, or if you would like to have an SMS Adviser assigned to you. The list of advisers is on this page:
https://apps.carleton.edu/dos/sexual_misconduct/get_help/support/on-campus_resources/sms_advisers/

After we have met, you will need to meet with Mary Dunnewold, our college investigator. She will



interview you to hear your perspective of what happened the morning in question.

Earlier today I emailed you to ask whether you want your parents included on any communication (emails). Since I did not hear back from you, I am only including [REDACTED] on this email. I will need you to let me know if you want them cc'ed on other emails.

Please let me know when you are available to meet so I can provide more information about our process to you. Or you can call my office at [507-222-4075](tel:507-222-4075) and request a meeting with me through Kari or Tammy. Make sure to let her know we will need one hour since she typically schedules for 30 minutes.

Thank you,
Amy

--

Amy Sillanpa
Assistant Dean of Students
Director of Community Standards
Interim Title IX Coordinator
Carleton College
[507.222.4075](tel:507.222.4075)
Pronouns: she/her/hers

<Student_procedures_approved_by_CC_final_final.pdf>

<1st_conversation_check_list_for_students__April_2016.pdf>

--

Amy Sillanpa
Assistant Dean of Students
Director of Community Standards
Interim Title IX Coordinator
Carleton College
[507.222.4075](tel:507.222.4075)
Pronouns: she/her/hers

2 attachments



1st_conversation_check_list_for_students__April_2016.pdf
366K



Student_procedures_approved_by_CC_final_final.pdf
112K

Amy Sillanpa <asillanp@carleton.edu>

Fri, May 12, 2017 at 8:31 AM

To: [REDACTED]


Hi [REDACTED]

Thank you for setting up a time to meet with me on Monday. I encourage you to also set up a time to meet with Mary

Dunnewold, the College Investigator, early next week for your interview with her (so an appointment is held on your calendars). I've attached the sheet I give to students of potential questions so they can start thinking about them and preparing for the interview. You can email Mary at mdunnewold@carleton.edu to set up a time. She said she has quite a bit of open time on Tuesday. She will also ask you if you have any witnesses you want her to interview, so please start thinking about that as well.

Thank you,
Amy

[Quoted text hidden]

 **Information_to_consider_in_preparation_for_the_investigation_interview.pdf**
45K

From: Amy Sillanpa <asillanp@carleton.edu>

To: [REDACTED]

Sent: Friday, May 12, 2017 10:31 AM

Subject: Re: notification of complaint

[Quoted text hidden]

A Matter of Consent

By Thomas Rozwadowski

The statistics are harrowing. A recent Centers for Disease Control and Prevention survey found that 50 percent of female victims report experiencing an incident of sexual violence between ages 18 and 24—the exact years that many women spend on college campuses. The convergence of factors— young people living together for the first time, removing parental supervision, and adding alcohol—makes it easy to conclude that bad things are bound to happen, right? Not necessarily. On the heels of several high-profile assault cases from Vanderbilt to Virginia, colleges, including Carleton, are heightening their efforts to prevent sexual violence from occurring and to have clear protocols in place if it does.

In 2014 Emma Sulkowicz, then a senior at Columbia University, carried her dorm room mattress around campus as part of an art project. She took it everywhere—even across the stage at her graduation ceremony—in order to call attention to the university's refusal to expel the student she claimed raped her during her sophomore year. Of her project, titled "Carry That Weight," the *New York Times* wrote:

It is so simple: A woman with a mattress, refusing to keep her violation private, carrying with her a stark reminder of where it took place. The work is strict and lean, yet inclusive and open ended, symbolically laden yet drastically physical. All of this determines its striking quality as art, which in turn contributes substantially to its effectiveness as protest.

The past 30 years shouldn't feel like the dark ages when it comes to sexual assault awareness on college campuses. After all, female students are far more empowered to speak their minds compared to the '50s and '60s era of curfews and separate dorms for women. Yet Laura Williams '88 often looks at the evolution of her career as an exercise in extreme patience. Simply put: Talking about sexual assault in the '80s, '90s—even the 2000s—didn't evoke the same level of empathy and understanding that it does today.

“Something has changed in the past five years,” says Williams, an independent consultant in St. Paul who has spent much of her career working with the Minnesota Coalition Against Sexual Assault. “I was passionate about this work in the ’80s, and even I couldn’t have imagined what the conversation would be like today.”

As a student at Carleton, Williams was active in Student Movement Against Sexual Harassment (SMASH), a group that conducted a mock date rape trial on campus. For an independent video project at Carleton about sexual assault, she interviewed students at colleges in Minnesota and Wisconsin and visited rape crisis centers.

After graduation, Williams worked with police, prosecutors, judges, and sexual assault survivors on community enforcement protocols that identified response gaps to ensure “victim cases wouldn’t fall through the cracks,” she says. She also began to understand why colleges adopted a framework that was focused more on risk management than on survivor support.

“In the previous environment of risk management, legal counsel had a lot of influence,” says Williams. “You didn’t find a lot of colleges willing to say, ‘Hey, let’s do something different.’”

“In almost any major social movement, it’s not unusual to see a paradigm shift only after someone from the outside gets involved. For colleges, the Clery Act and Title IX changed how everyone approached the issue.”

The U.S. Department of Education’s “Dear Colleague” letter, issued in 2011, gave colleges a “significant guidance document” to address sexual violence on campuses, says Williams. The trigger: President Obama’s decision to use federal funding (or the withholding of same) as a means of enforcement. His administration’s policies focused on civil rights protections through Title IX, an existing federal law more prominently known as a means to grant female students equal access to sports. The Clery Act, signed in 1990, already required colleges that participate in federal financial aid programs to compile, publish, and distribute statistics concerning certain campus crimes in annual security reports. But in 2013 Obama signed the Violence Against Women Reauthorization Act (VAWA), which further required schools to collect and release crime statistics on newly



named offenses (dating violence and stalking, crimes based on gender identity, for example) annually under Clery. Colleges also had to present prevention programs like bystander intervention to incoming students and new employees.

The overall message—as summarized in a July 2016 *Washington Post* article about Obama’s Title IX enforcement legacy—was clear: “Colleges, you’re not doing enough.”

“For colleges, the Clery Act and Title IX changed how everyone approached the issue.”

“It’s not like there wasn’t a dialogue before, but the ‘Dear Colleague’ letter was a game changer,” says Laura Haave, director of Carleton’s Gender and Sexuality Center (GSC). “The expectation on campuses, the ongoing discussions, the training, the experts—before, it used to be, ‘Okay, who is on campus already? Oh, you. You’ll be the Title IX coordinator.’ Now there’s an entire career field for campus-based survivor advocates and for Title IX coordinators. Campuses are finally bringing in people with substantial experience to fill these positions.”

That matters, because it shows a tacit understanding among educational institutions that a major foundational shift had to occur, says Angela Hattery ’88, a sociologist and head of the women and gender studies program at George Mason University.

As roommates and campus activists, Hattery and Williams worked side by side on a lot of early Carleton initiatives that shone a spotlight on sexual assault. Hattery’s current research at George Mason is focused on gender-based violence in social institutions, including the military, prisons, the Catholic Church, fraternities, and sports. She wrote a book, *Gender, Power, and Violence*, due this summer, that examines the tension between victims and the institutions they believed would protect them—or at least have their backs.

“These are institutions that have deeply entrenched internal systems of justice. As we’ve seen, there are a lot of negatives to those systems,” Hattery says. “Basically, you had college campuses, the military, and the Catholic Church trying to figure out how to adjudicate felonies. That’s not what they’re trained to do.”

In 2015 Carleton reported 20 sexual assaults on campus.

Following an initial investigation, 8 required a disciplinary action greater than a warning and 4 were referred for a full investigation and adjudication through Carleton's formal disciplinary process. Even with the transparency required through Title IX, however, statistics tell an incomplete story. As inconsistencies in national sexual assault data demonstrate, the full scope of sexual violence can never be accurately documented since so many incidents go unreported. And even if an incident is reported, not every case will move forward if a complainant decides against a full investigation—whether due to personal reticence or lack of trust in the system itself.

Yet, in 2017 zero tolerance on college campuses (including Carleton's) is expected, important conversations about sexual assault are being initiated, and greater avenues for openness, advocacy, and advanced training are encouraged. But a united front reinforced by good intentions and bold declarations cannot mitigate what still feels agonizingly like an unsolvable problem. How are colleges supposed to protect their students from becoming victims of sexual violence? Is what's required by the Department of Education good enough? Or can we do better?

Establishing Values

The cover of “#CarlTalk: Consent, Healthy Sexuality, and Relationships” features two penguins having this conversation: “Can I kiss you?” “Nah, I’m good.” “Oh okay, that’s chill!”

But don't be fooled by the lighthearted introduction: the 32-page booklet produced by Carleton's Gender and Sexuality Center is unflinching in its directness. Both the booklet and the two-hour companion talk—presented during New Student Week—feature Carls reflecting honestly about consent, be it flirting with a crush, a first kiss, or having or avoiding sex. Emotions fluctuate between righteous indignation (“Call out problematic shit, because that ain't cute”) to solemn regret (“I wish I had known that just because someone wants to have sex with me does not mean I have to have sex with them”) to confident reassurance (“There will be plenty of other students who have yet to share their firsts, and that's okay. Awkward people mate here”).

But this isn't the first or only chapter in the Carleton playbook.

Even before freshmen arrive on campus, they are required to complete several online courses, including Haven, a sexual misconduct prevention program adopted during the 2015–16 academic year, AlcoholEdu, and Marijuana-Wise. Both drugs and alcohol have been cited as factors that contribute to sexual violence at colleges. Even as first-years are unpacking their plastic bins and getting to know their roommates, the college is sending a clear message: You are part of the Carleton community now. Embrace our values.



“We have unique opportunities to educate young people in ways that other communities don’t,” says Carolyn Livingston, vice president for student life and dean of students. “In other communities, you might only get to educate after the violence has been done. At Carleton, we say, ‘Let’s educate you before you even consider being violent or become a victim of violence.’ And if you’ve done something in the past that doesn’t fit our values, we’re going to give you the tools to hit the reset button on that way of thinking.”

“We do not tolerate people who violate our safety,” Livingston adds emphatically. “There is no place for sexual violence here.”

Sexual assault is a societal problem, a human one that affects all genders. Yet despite progress on multiple education fronts, the land mines planted within a residential college ecosystem make 18- to 22-year-olds particularly susceptible. In *Guyland*, a book about the sociological factors that condition young men, author

Michael Kimmel writes that “a college student today will never again be in a place where there are so many sexually active unmarried people.” Women are most at risk. According to the Department of Education, from 1995 to 2013 females between the ages of 18 and 24 were more likely to experience rape and sexual assault than females in all other age groups.

Carleton is also attuned to sexual violence in LGBTQA+ populations, an oft-neglected demographic in the national conversation. The college’s 2015 sexual assault/campus climate survey—an optional survey of anonymous responses implemented by the Higher Education Data Sharing Consortium—showed that half the students (20 of 40) who reported experiencing an assault were nonheterosexual. The 2016 U.S. Department of Justice Campus Climate Survey Validation Study—conducted with more than 23,000 participants from nine schools—also cited that females, young students, and LGBTQA+ students were the most vulnerable groups on campus. Transgender students, in particular, experienced a 28 percent prevalence rate for sexual assault, according to the report.

GSC director Laura Haave lives with those statistics every day. On the wall of her office is a makeshift visioning board filled with inspirational quotes, idea maps, and bright pink Post-it notes that serve as a daily reminder of all the work that lies ahead. Haave says she is always adding new Post-its.

“For me, the work isn’t about compliance with protocols. It’s about holding ourselves accountable and creating a community here that feels empowered to hold the college accountable,” says Haave. “We might make mistakes, but we’re also able to correct them. I genuinely believe that Carleton is good at listening when people tell us to do better. We *want* to do better.”

An educator, survivor advocate, and LGBTQA+ activist for more than 15 years, Haave speaks passionately about everything from consent conversations and early childhood curriculum development to bystander intervention and building healthy relationships. She is at her most affirmative when she talks about students: We must trust students who come forward to report sexual assaults.

“My number-one role is to be someone students can trust to be on their side,” Haave says. “I can’t ever break that trust.”

Although she is one of the most outspoken voices on campus, Haave is not a rogue crusader. She collaborates with overlapping student, faculty, and staff groups, such as Gender and Sexuality Center Associates, Title IX Lead Team, Green Dot steering committee, Carleton Student Association, and Campus Advocates Against Sexual Harassment and Assault, all of which work to prevent violence on campus. Together, they are building a framework that complies with federally mandated Title IX regulations and allows Carleton to stay ahead of an ever-changing tide of activism and awareness initiatives.

At the forefront of those efforts is providing more education about consent. Carleton defines consent as the “mutual understanding of words or actions freely and actively given by two informed people, which a reasonable person would interpret as a willingness to participate in mutually agreed upon sexual activity.” No physical force, intimidation, or coercion. No incapacitation. Silence and noncommunication do not qualify as consent. The “#CarlTalk” presentation and booklet are an attempt to deliver these messages with the kind of candor needed to establish firm ground rules, but Carleton faces an ongoing challenge.

“We share with our students the preventive pieces, but then we say, ‘Now you’re accountable. Abide by it.’ And it’s tough for them,” Livingston says. “There are a lot of dots to connect, and with this age group, those connections aren’t always easy to make. Consent is a major part of the discussion, but where do healthy relationships fit in? What are the different scenarios for sex that students don’t actively think about? How do we talk about the role that alcohol and drugs play? We have to build the complete picture.”

Putting the Pieces Together

Mary Dunnewold finds the full picture frustratingly elusive. As Carleton’s sexual misconduct investigator since 2013, Dunnewold is responsible for enforcing policies, interviewing parties, and working with adjudicators to resolve complaints. The majority of Carleton cases, which are submitted as “community concern” forms, reveal an inherent cloudiness in the notion of consent as practiced reality, not just proposed theory.

"We are not effectively educating our young people about consent before they arrive at college," says Dunnewold. "If we don't teach them the skills to talk about sex, all they have to go on are the ambiguous signals that can cloud an actual encounter."

"Campus sexual assault almost never happens the way people imagine it, with clear predatory behavior. That's why there have to be additional layers to the consent conversation. We need to address the lack of communication that takes place somewhere in between. That's not to say there aren't times when someone says no, and the other person proceeds anyway, but it's just not what I see in the majority of cases."

For example, two freshman students—a male and a female—have sex with each other a few times while they're both sober. Consent is granted in each instance of sexual activity. They might even label themselves as "in a relationship," says Dunnewold. One Friday night, however, the female student gets intoxicated at a party and ends up back in the room of the male student she has previously been intimate with. He has sex with her while she's incapacitated, without her consent. He has violated Carleton policy.

A text exchange between two students could reveal a conversation in which a woman says, "Let's hook up tomorrow night," and the man agrees, but it can be hours or days before they actually see each other. Without reaffirming consent "in the moment," Dunnewold says, the man may believe that the pair's previous text exchange—and the absence of a clear "no"—serve as permission for him to engage in sexual activity with the woman. What does "hook up" in text form imply or even mean? Doesn't matter. He has violated Carleton policy.

In another example, a female student tells a male student that she doesn't want to go back to his room or have sex. Hours later, however, she goes to his room with him. Now there's ambiguity when a sexual act occurs, Dunnewold says: Did she change her mind and go willingly? Was she coerced? Was she too drunk to make a decision or to hold to a decision that she'd already made?

"We are not effectively educating our young people about consent before they arrive at college."

These are the evasive pieces that must be thoroughly examined by the college, explains Dunnewold. Administrators face the daunting challenge of adequately supporting victims even as they implement a thorough investigative process that can feel intrusive. Finding a balance between empathy for complainants and due process for the accused has been and remains fraught with tension. Carleton is not immune. Last year, a former student sued the college, claiming it did not properly respond to two incidents of alleged sexual misconduct. The lawsuit is in the early stages and no significant decisions are expected until late 2018.

In investigating sexual assault, Carleton relies on the same standard of evidence required in civil trials—"a preponderance of evidence"—for the burden of proof. There is nothing inherently wrong with that threshold, writes Jon Krakauer in his best-selling book *Missoula*, which examines several rape cases at the University of Montana. Krakauer argues that "despite the deeply flawed ways that many universities investigate and adjudicate rape allegations, it's important that they not be allowed to abdicate their institutional responsibility and simply turn over sexual assault cases to law enforcement agencies. . . . Criminal investigations of students accused of rape should be undertaken *in addition* to universities' disciplinary proceedings, not in lieu of them."

Detractors of Obama's Title IX enforcement policies disagree, citing the need to protect the rights of the accused as well as the accuser. They argue that colleges cannot ensure due process in their investigations because they are not equipped to arbitrate what, essentially, amounts to a criminal prosecution. If both the accuser and the accused are students at the same institution, they should have the same rights. So what are the accused's means of defense?

"We have to have a fundamentally fair process, one that the respondent also gets to participate in," says Dunnewold. "We can't proceed on hearsay or rumor. But if a student tells us that she or he wants another student suspended for a sexual assault, the conversation has to include 'Here's how that could potentially happen.'"

Because multiple interviews are required of all parties and potential witnesses, an investigation typically consumes an entire academic term, says Dunnewold. Time alone can be a major

deterrent to moving forward for a complainant. The final decision on sanctions or consequences for an accused student lies with the Community Board on Sexual Misconduct, which is made up of Carleton students and faculty and staff members. If a complainant opts against a hearing, there are nonadjudicated options, such as changes in classes or class schedules, or moving students from a residence hall or dining hall.

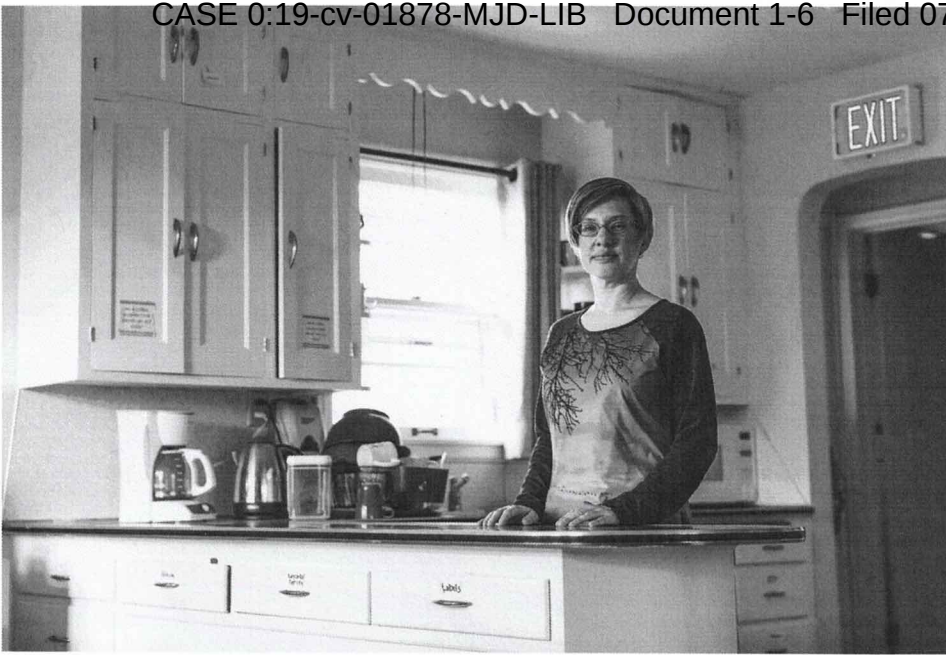
Education and Expectation Gaps

When her son—a Carleton alumnus—was three or four years old, Dunnewold had a conversation with him about a doctor's visit. "Good touch, bad touch," she says. It was very clear. It felt comfortable. The basis was medical, not sexual.

As her son grew older, Dunnewold did a "terrible job" of talking about sex with him, she says. "I had been a sexuality educator with Planned Parenthood, and I didn't do it. And now I think about all the people who are less comfortable talking about sex than I am. That weighs on me."

Dunnewold's work with Carleton students has made her realize how parents and educators do a disservice to children when they fail to address sexuality and consent during their formative years. For adults in long-term relationships, gaps in verbal consent aren't as prevalent because of familiarity and heightened assurance between partners. Those comfort levels are largely nonexistent for young people, Dunnewold says, which "makes it hard for adults who know what consent means to relate to a campus hookup, or a new relationship, or a situation where you're not confident enough to ask, 'Do you want to do this?'" Add alcohol into the mix—as is commonly the case in assault cases—and ambiguity, misinterpretation, or wanton disregard reign among sexual newcomers.

"When we're uncertain, we turn to what we know. And on a college campus, there's a lot of uncertainty," says Drew Weis, a clinical psychologist with Student Health and Counseling. "When students get here, they find themselves in situations where they don't know how to respond. If they admit to those uncertainties, they can start to overcome the vulnerabilities of less-informed ways of thinking and acting."



Freshmen arrive on campus with vast disparities in their sexual education, says Haave. Some have a decent understanding of reproduction and sexually transmitted diseases. Others may have had comprehensive sex education thanks to a progressive school, church, or community program, possibly an adult influence. Another group might adhere to an abstinence-only model. Pulling back the curtain on consent starts with acknowledging those differences of preparedness among students, helping them confront tough questions, and—perhaps most importantly—guarding against shame, says Haave.

“I’ve been a sexuality educator for kids as young as five, which always blows people’s minds,” she says. “They’ll say, ‘What could you possibly teach in those classes?’ Well, for starters, we teach them that their bodies aren’t shameful and they have a right to set their own boundaries.

“If we reduce shame and stigma around sexuality and gender, we allow people to be their authentic selves. That leads to less tolerance for sexuality that is coercive or harmful. Also, society’s normative gender roles—men are the aggressors, women are supposed to say no—have set up a scenario for sexual assault and shame. Once violence happens, women are told that they must have done something to encourage it or that they should have been able to stop it. So a lot of women stay silent. They’re told, ‘You’re supposed to control men’s sexuality.’”

Through her work at a number of colleges, including George Mason, Hattery has seen a growing rejection of traditional male-dominant norms among female students. But even if college-age women are more confident now than in the past, confusion about consent still dominates. When Hattery talks with students about potential sexual assaults, 9 times out of 10 they'll refer to an unnamed "thing" that bothers them. Women often talk about not "feeling right physically" later. On one occasion, a student told Hattery that she and her boyfriend were making out and he later held her head down while she performed oral sex even though she didn't want to. Then she asked, "Is that wrong?"

"Women often ask me, 'What do *you* think about that?' I find that interesting because it speaks to these blurred lines," says Hattery. "Students aren't clear about what is required for consent. And so the people who are victimized come to me or someone else looking for reassurance. While I don't think it's my job to put a label on something they haven't labeled, they're obviously upset about this thing that happened. It's why we need more training and education on consent."

There are two primary schools of thought about consent in sexuality education circles, says Haave. One proposes that educating about consent will effectively minimize the number of assaults. If men—who have been socialized to be sexually aggressive and to tie their masculinity to coercive tactics—are taught to acknowledge the unhealthy dynamic their behavior creates, they could learn to ask for consent. Another view posits that most acts of sexual violence are committed by a small number of repeat perpetrators. Those violent offenders don't care about consent, Haave says, so education can't penetrate the psychological profile of a man who feels entitled to assault for misogynistic reasons, a man who thinks "women deserve this."

"Whether education about consent stops sexual assault is hotly debated, and there are valid arguments on both sides," Haave says. "I strongly believe that consent education allows survivors to identify what happened as nonconsensual and come forward. They are allowed to see that an assault was not their fault. It's also critical for bystanders and people who are friends of survivors to identify behavior that is nonconsensual. There's a collective understanding: 'This is dangerous.' We need consent policies and education in place for that reason."

Supporting Survivors

Tacked inside the stalls of every Carleton bathroom are blue signs that contain contact information for Campus Advocates Against Sexual Harassment and Assault (CAASHA). The peer-based support group, established in the early '90s, acts as a confidential first line of defense in the fight against sexual assault at Carleton.

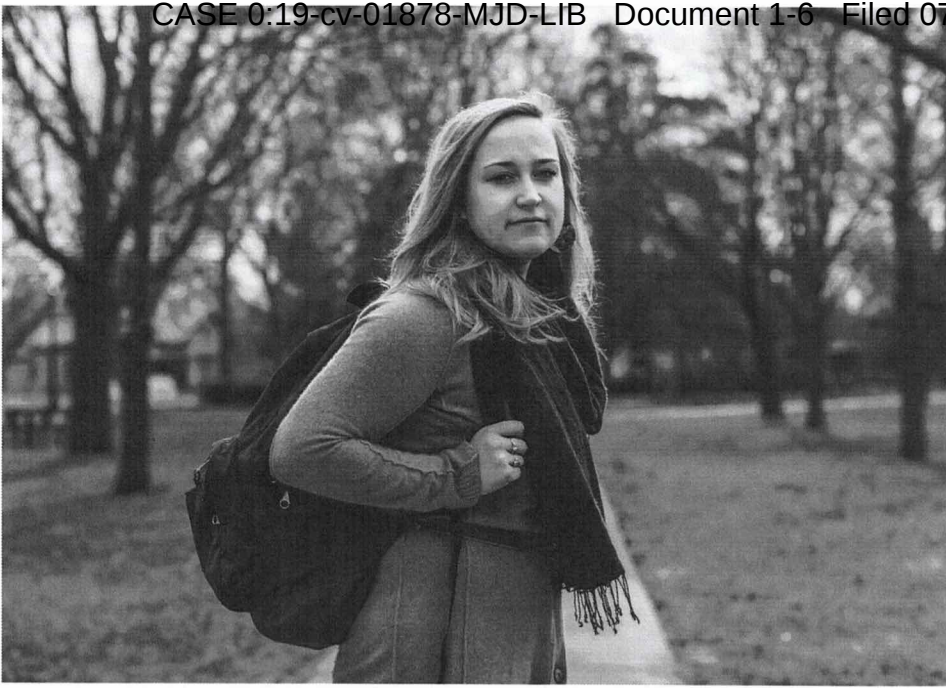
Sarah Magid '18 (Englewood, Colo.) and 11 other CAASHA mentors counsel students through phone, e-mail, or in-person consultations. First and foremost, they are trained to provide nonjudgmental listening and support. They are not obligated to report assaults to anyone else, which is why, in many cases, students contact a CAASHA member first. Filing a community concern form, reporting an assault to police, or talking to a professional counselor can feel too official or intimidating.

"The first thing I do is thank them for trusting me, because seeking someone out is not easy," says Magid, a psychology major with a women's and gender studies concentration. "They can share as much or as little as they like. We're mainly here to listen."

Three years at Carleton have transformed Magid. She expresses deep disappointment, even contempt, for her approach to consent and relationships as a teenager: Who was this person who couldn't identify her own emotional needs, who didn't understand her sexuality, and who didn't feel like she deserved to feel safe, comfortable, and respected?

"The first time I heard the word *consent* used in the context of sexual intimacy was at New Student Week," says Magid. "Looking back at high school and the early days of college, I had a different view of myself and my body. I did not voice what I wanted, because that was always secondary to my partner's needs. Consent never even came up, so how was I supposed to know that it's important?"

Magid has continued to struggle with her personal awakening. At Carleton, she's experienced the good—"The first time someone at Carleton asked if he could kiss me, I was giddy"—and the ugly—"I was assaulted. I am a survivor." She didn't report her sexual assault at Carleton, but instead plunged into an emotional abyss that affected her social life and schoolwork. She eventually found help through CAASHA. "That's how I got involved with them. I was directly affected," Magid says.



Koehler Powell '17 (Pittsburgh) is also a survivor. She didn't fully come to terms with her assault, which happened in high school, until she heard other survivors share their stories at a GSC "Speak Up" event her freshman year. Instead, Powell blamed herself, "thinking the problem was me instead of the person actually responsible, and then I had to go through the trauma again once it hit me," she says.

Both Magid and Powell are advocates for affirmative consent: explicit, informed, and voluntary agreement to participate in every sexual act before it begins. They're also realistic. Verbal consent at every step of a sexual encounter can feel stilted and be a mood-breaker. However, in *Yes Means Yes!*—a series of essays about sexual violence and rape myths—Rachel Kramer Bussel writes, "The kind of consent I'm talking about isn't concerned just with whether your partner wants to have sex, but what kind of sex and why. . . . Getting more comfortable talking about sex in and out of the heat of the moment means there'll be fewer of those awkward silences and less chance of one person thinking they had the best sex in the world while the other wishes it had never happened."

On the surface, Carleton would appear to have built-in advantages compared to larger universities that wrestle with multimillion-dollar athletic programs or dominant Greek and party cultures. Both factors have contributed to recent high-profile sexual assault cases throughout the country, and often influence a broader campus culture of entitlement and predatory

behavior. Yet talking about sex in a meaningful, honest way with peers—even on a small, intimate campus like Carleton’s—is still at odds with reality, says Powell.

For starters, on a campus of roughly 2,000 students, people either know each other personally or quickly hear the day’s hot gossip. There’s also a perception that Carls are characteristically awkward, Powell says, “and the more awkward you feel, the more difficult it is to talk about sex.”

Conversations about sex and sexual assault do happen among some students on campus, say Powell and Magid. Yet if they try to extend those conversations beyond certain circles, they’re often met with eye rolls and objections of “not this speech again”—reactions that may feed into a general insecurity among students who want desperately to fit in and measure up. In college, you’re *supposed* to be having sex, right?

A 2011 study by Amanda Holman, then a University of Nebraska graduate student, found that even the term “hook up” has “strategically ambiguous” meaning for college students. Of the 274 students from a large public university who were interviewed, more than half said a hookup involves sex, while those who most frequently participated in hookup culture defined it as “unplanned, inebriated sex.” Nine percent, however, said hooking up only meant fooling around and kissing.

“It’s a common misconception that everyone at Carleton is having sex, in a relationship, or hooking up, but no one really wants to talk about that. You don’t want to be the outsider,” Powell says. “Instead, you get stuck comparing yourself to everyone and thinking that you’re missing out on something. There’s a big emphasis on ‘the college experience’: It’s your only time to get wild! You’ll never be able to do these things again!”

Moving Forward

When Livingston sent a campuswide e-mail from the Dean of Students Office in August announcing that Carleton was hiring a full-time Title IX coordinator, Powell read it and cried. “This is what a lot of us have been asking for,” says Powell, who serves on the Title IX Student Visioning Team, a group that provides Carleton with feedback about sexual assault policies, campus climate surveys, and support systems.

It's more than symbolic. Carleton is demonstrating its commitment and putting resources into combating sexual assault on campus, Livingston says. While some students and alumni have pointed out that hiring a full-time Title IX coordinator is overdue, Haave says the move is in step with the college's holistic view toward improving the overall response infrastructure at Carleton. Having more staff members with expertise and understanding about these issues will make a difference for programs and reach a wider population, says Haave. There can never be too many trusted advocates available to students.

After all, Haave only needs to look at the Post-its on her office wall: "Collect more data to inform prevention platforms. More media campaigns and online programs. Continued prevention education for sophomores, juniors, and seniors. Men's engagement initiatives." It's a running tally of the work a new Title IX coordinator is likely to undertake.

"A lot of students ask, 'Well, who am I to say what's right or wrong?' But if we can establish what's expected here, you won't be as likely to ignore something."

A strong, progressive foundation is in place thanks to Green Dot, a nationally recognized bystander intervention curriculum that focuses on how small choices can reduce harm in the community. Beginning in 2015, staff members have been training students and faculty and staff members to speak up or seek help when they see behavior that feels off or dangerous. Haave and Dunnewold see safety in numbers as another bedrock of Carleton values. Since Green Dot began, 231 students have completed the six-hour bystander intervention training.

"Green Dot fits with educating students about consent. It further establishes what the rules are at Carleton," Haave says. "It's about speaking up and not being afraid to stand out. A lot of students ask, 'Well, who am I to say what's right or wrong?' But if we can establish what's expected here, you won't be as likely to ignore something."

It's unclear how a new presidential administration and the Department of Education under Betsy DeVos will affect Title IX protections or influence a national conversation about sexual

assault on college campuses. Dunnewold says Carleton “will continue to do the right thing for our campus” and won’t roll back its commitment to bringing awareness to sexual assault issues and advocating for survivors.

Real change means going beyond the expected pathways to bring together all corners of campus, says Laura Williams. And Carleton has been a national leader in this arena before. In 1983 the college was one of the first in the country to establish a comprehensive policy against sexual harassment. While Williams is encouraged by how Green Dot and GSC “Speak Up” events establish consistent patterns that carry through a student’s four years, Carleton “can’t be afraid to take the lead and try new things” again, she says. Colleges must protect the vulnerable.

“I am always struck by the generosity of people who have been harmed, who are survivors,” says Williams. “They somehow say, ‘What happened to me was horrible, and I don’t want it to happen to anyone else.’ Then they get outside of their personal pain to seek justice and truth telling, and align themselves with others who have been and will be harmed. They simply expect that our institutions do the same.”

Taking a Stand

Alex Trautman '15 wishes he could have done more.

His regret is evident when he discusses Carleton Men*, a group he started at the end of his senior year for male students to discuss manhood and masculinity. It’s something Trautman, a native of Lexington, Massachusetts, felt that Carleton needed after he joined Campus Advocates Against Sexual Harassment and Assault (CAASHA) and discovered he was one of the few male members.

In an early Carleton Men* meeting, Trautman cued up a scene from the movie *Good Will Hunting* in which Matt Damon’s character verbally jousts with a smarmy Harvard student, all for the benefit of Minnie Driver’s character, who is sitting at the bar. At the end of the scene, Damon brags about getting Driver’s phone number: “How do you like them apples?” he preens. Trautman wanted his fellow students to notice the hidden context, the social conditioning behind the bravado.

Is this what we are?—men predators, women prey—Trautman asked. And in the end, is Driver's number even the real prize or was it all about male ego?

Trautman's group wasn't the first at Carleton to explore masculinity and how it can contribute to a culture of sexual violence in a peer-to-peer setting. MSex, a no-credit course about masculinity and sexuality, was first offered in spring 2013 and continues today. Other less formal groups have come and gone, depending on who was available to push the initiative. Carleton Men* met only a few times before Trautman graduated and the group disbanded.

"I wish I had started that group as a sophomore," he says. That was the year he first saw the toll sexual assault can take on a person.

"I went to a [Gender and Sexuality Center-sponsored] 'Speak Up' event, and I heard people I knew, people I was close to, say they had been assaulted. It became real to me," Trautman says.

"I had no experience with sexual assault when I came to Carleton. But this horrible thing had happened to them. I responded very strongly to what I heard."

Trautman began talking with female peers about sexual assault and what he could do on campus, but he didn't feel equipped to make a difference. And then, during his senior year, a female friend suggested that he join CAASHA. However, when he was surrounded by female students—many of whom identified as survivors—Trautman realized how little he knew about sexual violence.

"Women are affected by this every day, and I felt totally out of my element," he says. "I had zero confidence in my knowledge about sexual assault—what language to use, what questions to ask—and I didn't want my lack of understanding to be perceived as intentionally hurtful.

"I think that's common for guys. It's why I started Carleton Men*. By having only men in the room, I thought it would allow us to ask honest questions and explore what we don't know."

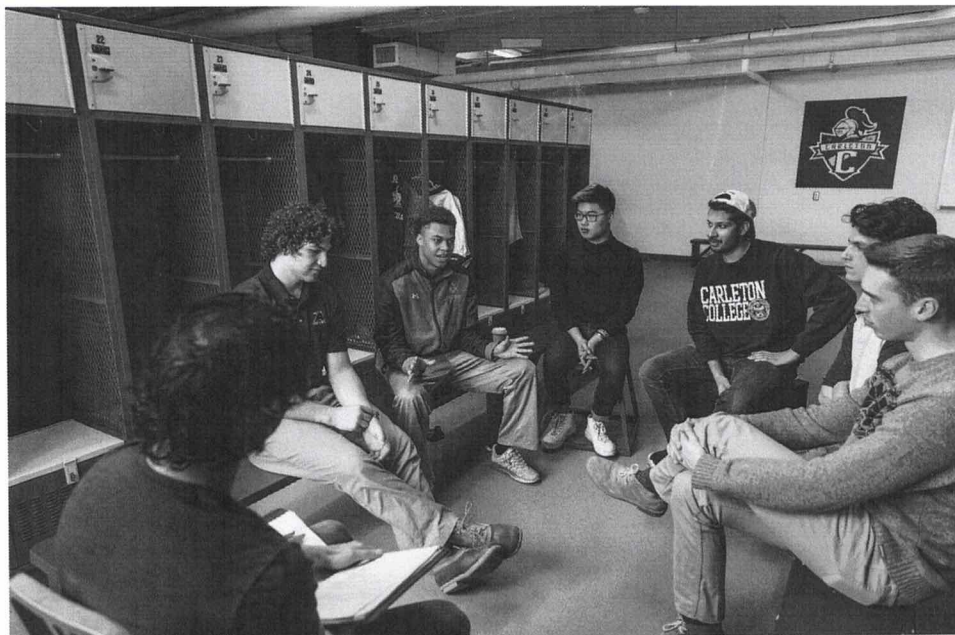
As both a sports captain for Carleton Ultimate Team and a CAASHA member, Trautman didn't fit traditional campus stereotypes. He is hopeful that more Carleton students and staff members can encourage overlap between campus groups that don't often interact, or simply aren't expected to.

Let's Begin Again

For years, colleges nationwide have focused their efforts to prevent sexual assault by educating women about certain high-risk behaviors that emphasize self-protection and restraint. In some ways, this makes sense because women still comprise the vast majority of victims. Yet, a woman-focused approach feels misguided and out of date. Today, women are demanding that men be brought into the conversation and, although many men are willing, they are often unsure where to begin.

To that end, we organized a discussion with a group of Carleton men about their role in acknowledging and preventing sexual violence.

(This is an extended version of the discussion appearing in the print version of the *Voice*.)



During the two hours that six male Carleton students were discussing gender dynamics, perceptions of masculinity, and factors that lead to sexual assault, some variation of the phrase “it’s difficult” popped up 12 times. This *is* difficult stuff. And while there were long pauses and moments of uncertainty, the conversation also featured thoughtful reflection on topics men often struggle to discuss. “Boys definitely don’t talk about this growing up,” said one participant.

The discussion took place in a locker room at Laird Stadium, a location chosen because locker rooms traditionally have been

viewed as male territory. It's a positive environment for some, an ill-fitting one for others. Historically, phrases like "locker room talk" or "boys will be boys" have been used to explain or excuse male posturing, lewd talk and behavior, and sexual harassment—all cited as major factors in perpetuating rape culture. And that's where our conversation began.

Recent incidents and allegations involving high-profile male celebrities have spurred a national conversation about attitudes toward sexual assault—most notably, how men encourage and protect other men, often through social conditioning. In particular, the phrase "locker room talk" became a flashpoint in the 2016 presidential campaign. What does that phrase mean to you?

Quinn Johnson '19, chemistry (Roseville, Minn.): I've never been in a locker room where someone talked about sexual assault. At the same time, I understood how it was being used as a potential defense for men and how they might talk behind closed doors: the implication that a guy would go out with a girl one night, and the next day at practice tell his friends what happened. In a sense, that could be "locker room talk." But for how it came up during the election, the phrase was grossly misused.

Suhail Thandi '17, cinema and media studies and political science/international relations (New Delhi, India): I have never been part of locker room culture, but I know that sexual assault is often linked to athletes. I didn't know if that was true or a stereotype. Some of my friends are athletes, and I know they wouldn't condone that behavior.

Christian Zaytoun '19, mathematics and statistics (Raleigh, N.C.): I view a locker room as one of the most important parts of sports and becoming a team. For camaraderie and rhythm to develop between teammates, you have to have an intimate setting where even coaches don't make their presence felt. It's just you and the guys who are going to be on the field or court with you. So, to me, the locker room reflects a special place where you don't have to sugarcoat anything, and you can expect some level of privacy for what you say. It's not a perfect application for how the phrase is used as a defense by men, but I understand "locker room talk" to mean that your conversation is for whoever else is in that

room. Now, I don't think it means you can say whatever you want. Being inappropriate is not cool.

James Harren '19, environmental studies (Oak Park, Ill.):

There is a difference between gossiping about your sex life and gross inappropriateness. I understand that some things are meant to be private, and that what you say to your teammates—especially if it's about your sex life—shouldn't leave that space if you're confiding in someone you trust. But sharing private details is much different from saying truly terrible things.

Chris Lee '19, political science/international relations

(Rolling Meadows, Ill.): I've never understood that about locker rooms. In my experience, whenever a guy would talk about his romantic life, another guy would have to step in and outshine him. Talking about women always turned into a competition. That said, the majority of time I spent in a locker room, whether it was playing tennis or as a wrestler, was very positive. But I also had negative experiences, and that was because of my sexual identity. I was not openly gay in high school. So, you take a sport like wrestling—hypermasculine, usually cisgender straight guys in singlets, all slapping each other's asses with towels—that's not the most comfortable space when you're trying to figure out who you are.

Zaytoun: I've played sports my entire life. I went to an all-boys boarding school for high school in the middle of Virginia farm country, 20 miles away from the nearest town. So I was in class with my guy friends, in the locker room with them, and then we'd go out to dinner together. In one sense, I never left the locker room. That was my environment for four years, and I loved it. I made some of the best friends I'll ever make, guys who would do anything for me. Other than in the military, I don't know where else you make bonds like that.

What expectations and pressures have you faced growing up as men? What has changed for you at Carleton?

Lee: Carleton has a confrontational culture to it and, whether you like it or not, your beliefs and opinions are going to be questioned here. I do a lot more calling out here, but it's also because I'm

much more confident about myself. In high school, I never spoke up.

Nick Leeke '18, economics and French (Hopkins, Minn.): It's still tricky for me. I've been in situations where I'd like to speak up when I hear something inappropriate, but there's this added dimension of, "Well, if I do, will it turn ugly?" I'm more likely to say something now compared to when I was in high school, but even so, it can be hard to know *how* to do it.

Thandi: I grew up with people who valued logic and reason over emotion. There was a lot of conversation about what a man *shouldn't* be: any trait that would be identified as feminine. If something happened that upset me, my parents would say, "Grow thicker skin. Be a man." Okay, but I have these feelings and I need to validate them somehow! It wasn't helpful to just say, "Ignore them."

Harren: A lot of what you think being a man is, especially when you're younger, is based on an archetype: a big, macho man who plays sports and likes girls. You learn pretty early in middle school and high school how you're supposed to act. I came out [as gay] early, the summer after my freshman year of high school. It feels like a long time ago. At Carleton I feel much more comfortable with who I am and, because of that, I have more guy friends than girl friends. That's new for me.

Zaytoun: Grow up. Be a man. You hear that all the time. To me, that's always meant, "You're going to experience adversity in this world, so you better face the wind." That's being a man. Not backing down.

Lee: I'm gay, but I'm not any less of a man. I like music and art and I love fashion. I've always felt that those were things that guys *could* like. But in high school, I knew that people were whispering, "Oh, he's a faggot." That's something that has always followed me.

Harren: I've been comfortable with myself for a long time, but never in male-dominated situations. I would act differently. I ran cross-country in high school, and I would *never* talk about boys in that environment. I still acted like myself, but I guess you could say I wouldn't be "gay gay." Just "kinda gay."

Thandi: I had a very strong mother, so I grew up in a family where I felt the gender dynamic was pretty equal. But some of my friends would often say, "Oh, my mom wanted to do this, but my dad said no." And that was the end of it. Or "My sister wanted to study abroad, but my parents said she couldn't because she's a girl."

Do men have a hard time talking about or owning their emotions?

Johnson: In high school, my mom would ask me how I was doing or what I was feeling, and I didn't like talking about it. It always made me super uncomfortable.

Harren: I never told my mom that people were bullying me in middle school. I think that's a normal inclination. Not to talk. Since I've come out, I feel more like myself and, as life goes on, I've realized that I have to talk about my emotions. That's a big part of growing up as a man. You realize that you have feelings.

Johnson: My older brother and my mom are best friends. He tells her everything. But whenever she'd ask me, I'd say, "I don't want to talk about that stuff, Mom." My senior year of high school, I had a serious girlfriend, and that opened me up a bit more. In a relationship, you're forced to talk about your feelings. I'm a lot better at it now, but it's never come easy to me.

Zaytoun: I never felt like I couldn't talk about my emotions. If I needed to get something off my chest, someone would have been there to listen. It's up to the individual, though. I don't think you can force it. You can leave the door open and let them come in, but I don't know that more conversations about feelings are necessarily the best solution for men. It's case by case.

Harren: I never saw my dad cry until I was 15. That's weird. Everyone cries. If men were more open about their emotions, maybe boys would see that and become more comfortable.

Leeke: I have deeper conversations here, and that's helped a lot. Everyone cries at Carleton. But in high school, you don't want to be seen coming out of the bathroom crying. That's taboo.

Do men at Carleton struggle to talk about sexual assault?

Thandi: It's hard, because sexual assault is mostly gendered—which puts a lot of men in the position of not knowing what it means to be a survivor. So how does it affect us personally? It's not something we talk about or engage with until we are pulled in.

Lee: There's this sense of responsibility when you talk about sexual assault as a guy because the people you identify with are the ones who overwhelmingly commit these crimes. First you have to acknowledge that you belong to this group. Then you have to examine your own thoughts. "Have I ever said anything to contribute to this? Have I ever reacted this way? What have my friends said or done?" If the culture is to change, *we* need to change it.

Thandi: I was pulled in my freshman year. Fall term, I was oblivious to sexual assault at Carleton. I had just come from India, where there's a new rape headline pretty much every day. I thought it would be different here. So, I didn't know if it was happening or not at Carleton, and if it was, I was pretty sure it didn't affect me. But I got a call from a friend at 3:00 a.m. She didn't know what to do. I didn't know what to do. Then I remembered, "Oh, there's CAASHA [Campus Advocates Against Sexual Harassment and Assault]," so I went to the bathroom, saw the one name I recognized on the sheet, and called that person. The police had to come. It was a very serious situation. But I know I wouldn't be involved in thinking about sexual assault on campus if not for that incident.

Lee: When you come into spaces where these topics are being discussed and you identify as male, well, you're in the position of power. And that's hard to talk about.

Johnson: My friends have said the same thing. If a white male enters a conversation about race and he says one thing that someone else feels is wrong—boom! He's a racist. If a man does the same with the LGBT community—boom! He's homophobic. They're not trying to condone bad behavior or insult people. They're just trying to learn and have a conversation, but they feel like they're being generalized and blamed for what they, themselves, haven't done.

Zaytoun: How do I empathize with a woman who has been

sexually assaulted? It's very hard, mentally, to step into that position. It's absolutely important to do that, but there will always be a disconnect. You can't possibly understand what someone else is going through, and making assumptions is dangerous. So people slip up, and often they don't realize it until they're called on it.

Leeke: But men have to be willing to enter those conversations and be vulnerable. A lot of men see the value in that, but they aren't sure how to admit, "I don't know this."

Zaytoun: I learn something new every time I talk to my female friends. Usually, I learn how little I know. You could do something [sexually] with someone 100 times, and feel like you're doing it the exact same way on the 101st time, but it could be assault. Whether you had any intention of doing something wrong, any malicious intent at all, it could snap in an instant. That's eye-opening to me. It isn't *only* up to me to think it's normal. There has to be mutual agreement.

What can Carleton do better?

Zaytoun: If the college wants to hammer down on trying to stop as much miscommunication as possible about consent, I think a good and easy place to start would be to crack down on drinking. It's not fair to say that we want to work toward eliminating sexual assault and not pay attention to drinking. The two go side by side.

Thandi: When I drink, I don't have the inclination to sexually assault someone. So while I get that there is a correlation, I don't think that because people drink, sexual assault occurs. I think people who engage in sexual violence use drinking as an excuse.

Johnson: There's a lot of conversation on campus about believing survivors. It's hard being on the outside of that situation. Only the two people who were there actually know what happened. I don't know where to start with that.

Leeke: I feel like conversations got more active last year. Green Dot [Carleton's bystander program] definitely feels more active. It's becoming ingrained in campus culture. That's the right step to take. And hiring a full-time Title IX coordinator [Carleton is

currently interviewing candidates for the position] is a huge step.

We need a person who has the students' trust and is at the center of a more robust platform for confronting sexual assault.

Lee: Students have to actively express what the expectations are.

If you are not playing by the rules here, you need to know that not only will there be consequences from the administration, but your peers will look down on you. We have to own that responsibility.

What could help engage everyone on campus about preventing sexual assault?

Harren: We should be teaching younger kids that sex is a mutual thing and it's okay to talk about it openly. When you come to Carleton, you might lose your virginity. I get that it's supposed to be a private thing, but a lot of people have sex here and we should talk about what that means.

Johnson: I would like to see more conversations taking place between people on campus who have different opinions. Too often, people just want to be around people who think like they do.

Zaytoun: I'm conservative and Catholic, and I talk to my friends—who are polar opposites from me—all the time. And not in a way where we're attacking one another. We're genuinely interested in each other's opinions and it's enjoyable to go back and forth. They're my best friends before and my best friends after. It goes back to how I view the bond in a locker room. It's easier for us to hear what the other person is saying because we already know each other. We know the intention behind the words. We trust each other to have that conversation.

Harren: Having those conversations can be so hard, though. Talking about complex issues can get really, really sensitive here. And now it's about sexual assault? You can hurt someone's feelings instantly.

Zaytoun: Without intending to.

Harren: And some are better at having these conversations than others. So I can understand how some people on campus might

feel like it's difficult to share their thoughts or ask questions in a meaningful way.

Lee: As a person of color, I understand the burden that the POC community feels about educating others who are not aware of their oppression. It can be hard to encourage people of color not to get angry or grow tired of constantly talking about issues regarding race—and to be willing to understand that not everybody comes from the same background. That it is okay to make a mistake when you're talking to us.

When you're charged with this extra burden, you're going have people say, "Why does it always have to be about race with you?" Because it *is* always about race! This whole country is about race! But I also think that there has to be a willingness to drop the wall that we put up because of so many bad experiences. That isn't always a popular opinion—and I understand my privilege as someone who has lighter skin in saying that. Still, we have to make an opening for others to come into our space and converse with us. Because sometimes the places on campus that claim they are the most welcoming are actually the most exclusive. You can't go in without feeling like you're intruding.

Similarly, conversations about sexual assault have to be two-fold. We have to encourage passionate people to keep talking about these issues while *also* keeping in mind that self-care comes first—and that there may be survivors of sexual violence in the room when these conversations take place. But we have to be mindful of including others who aren't as involved, as well. The majority of campus has to be willing to have these conversations and to confront what they don't know.

Christian Zaytoun '19 (Raleigh, N.C.) is quarterback on the varsity football team and a javelin thrower for varsity track. He heads the Carleton Catholic Students Association.

Quinn Johnson '19 (Roseville, Minn.) is a guard on the varsity basketball team and member of the Student-Athlete Advisory Committee (SAAC). He volunteers as a Spanish tutor at Greenvale Elementary School in Northfield.

Chris Lee '19 (Rolling Meadows, Ill.) is the Community, Equity, and Diversity Initiative liaison with the Carleton Student Association Senate

and a member of Exit 69, a Carleton a cappella group. He serves on the Title IX Student Visioning Team.

Suhail Thandi '17 (New Delhi, India) is a resident assistant and a member of MOSAIC (Mosaic of South Asian Interests at Carleton). He is trained in sexual assault intervention through Green Dot.

James Harren '19 (Oak Park, Ill.) is copresident of Food Truth, a Carleton food justice activism group, marketing and sustainability student manager for Bon Appetit (Carleton's dining services provider), and a member of the Title IX Student Visioning Team.

Nick Leeke '18 (Hopkins, Minn.) is a program director with Project Friendship, a nonprofit that serves Northfield youth. He is captain of the Alpine Ski Club and an academic civic engagement fellow with the Center for Community and Civic Engagement.

Find more information on Carleton's policy and procedures.

Photos by Sara Rubinstein '98

Comments

June 14 2017 at 11:36 am

Rick Nagel

No mention is made of the fact that Carleton's procedures for adjudicating allegations of sexual assault violate every tenet of due process that should be accorded to all those accused of serious crimes, accusations that can destroy a young person's future even though the immediate consequence be no more than suspension or expulsion.

Those due process protections denied by Carleton's policy include the right to call witnesses in one's defense; the right to confront one's accuser; the right to the effective assistance of counsel throughout the proceeding; the right to the presumption of innocence; and the right to be the subject of punishment only if found guilty beyond a reasonable doubt.

Reading this article reminds one of the Alice-in-Wonderland procedural world of "first the verdict, then the trial." It is clear that Carleton is on a mission that involves presuming the accuser's good faith and the accused's guilt.

such a presumption will result in Carleton's being successfully sued for itself violating Title IX and for defamation.

June 14 2017 at 1:15 pm

Rick Nagel

I neglected to add the following:

In a matter of such consequence, the burden of proof should be on Carleton to prove an assault beyond a reasonable doubt. But the burden required is only proof by a preponderance of the evidence, and the reality at Carleton is that the burden is ON THE ACCUSED to prove consent. This is a clear violation of the foundational requirements of criminal justice in America but also of Title IX.

June 15 2017 at 7:10 am

Vicky Harris

Haven't you read the national headlines recently where colleges and accusers are being sued because of a lack of due process? Seems like Carleton is falling in line.

Are there any men serving on these committees? None interviewed for this piece.

If a woman drives a car under the influence, is she not responsible in the event that she causes an accident?

Is the responsibility of seeking consent placed solely on the male in a sexual encounter?

In several of these recent cases women were found to have made these accusations because they knew the school would side with them no matter what. This article stated "we must trust them". How does that served the accused fairly? Must we not believe them? Doesn't seem very unbiased.

I would hate for my alumni dollars to be allocated for paying out settlements.

Slippery slope.....

June 18 2017 at 2:24 am

Recent Grad

hey guys

two people were expelled for assault during my time at carleton

almost all of my female and many of my non-female friends were assaulted during my time at carleton

where are your priorities?

June 18 2017 at 2:34 pm

Free speech

Carleton violates Title ix when it doesn't treat both sides equally, which is the heart of the statute. The DCL2011 was illegal, without APA notice and comment. It will devolve either politically with the new OCR or throughout the courts. Due process, experience over centuries teaches, is required to get to the facts, and an investigator who doesn't challenge the accuser and require texts and emails and phone calls, who doesn't question everyone, who lets the accuser and a victim advocate lead the way, is biased and immoral. The title ix offices need to get a grip. Consent is ambiguous, and that doesn't mean the accuser is right, or wrong. If we want women to be in the board room, as my generation has entered it, women need to take responsibility for their behavior, including drinking too much and having sex, which is not with overpowering force or a weapon. We need to get rid of the idea that our sons and brothers and willing to sacrifice their careers for sex. Being falsely accused of sexual assault is harmful and destroys lives.

This article relies upon false information. The mattress girl story, at the outset, shows this. If a writer doesn't know the bad, very bad facts of that case--those stubborn facts, as John Adams said, the whole article loses credibility.

I am not an apologist for real rape. Most of these cases are being brought long after the fact, when the women hears from someone else that the scene was sexual assault. What's wrong is the supportive environment for her, while well and good, does not challenge her to look at her behavior, make changes, and not go back to the guys room again at 2 am, and engage in sex. They have their phone there. They can call, they can report ASAP. To change the culture of hook ups, drunkenness, and slutty behavior, on the backs of young men, which is what the zealots want, should be openly declared. Charge all students to not have hook up sex ever. Tell them it is a land mine. Ask them for written consent each time. Ask that at Carleton, the parties fill out check boxes on a form, of what is allowed, and when. Tell them how to prove they had safe sex, what proof

looks like, with these protective measures, not just a condom. Charge them that the consent needs to be recorded on the audio or video setting of the phone. Teach the boys what the false claim looks like. Hand out BAC devices so they can each blow and get their BAC, pause, so that she can't say, later, she was too drunk when really it was regretted sex. Put a BAC device on each hall, and in each bathroom. Teach them about mattress girl, the Williams college case, the duke and UVA false claims, etc. teach them how they are entrapped unwittingly, that they need lawyers and protection. They are naive, and don't know that they have no due process. They think they are innocent until proven guilty, which is false. As long as she looks credible, she is believed and interim measures are taken that are indeed punitive. Teach them what happens when they are expelled after a kangaroo court proceeding. Teach them sex with a coed is not worth the risk without a video of the act, with the sobriety test recorded.

Title ix requires equal education, from both sides, equal support, and equal money. Carleton could distribute education about the advocacy groups for the accuseds. They are not alone, and we are trying to prevent more suicides of the false accuseds. False and puffed up allegations are morally wrong. But they happen with overzealous prosecutors and advocates who are anti men and infantilize women.

False claims affect men disproportionately. Title ix offices have to pursue them, and this is not retaliation. Retaliation must be defined to exclude claims that the accuser has made a false claim. And, if there are allegations that are clearly false, the accuser should be disciplined. It is not retaliation under title ix procedure to insist that the office also have a false claim investigated. Nor is it retaliation when the responding student hires an investigator to investigate since the school investigator is likely biased, as the one here is, i.e., the accuser is believed at the outset.

This is where the false statistics come into play. The author doesn't explain the problems with the 1:4 but the info is readily available by contacting the FIRE.org.

Many law professors across the country, especially Harvard, and legal groups, like the ACTL, want substantial change because the title ix hearings are grossly unconstitutional.

bottom line: wake up. Due process has to be observed to have any credibility to Title ix claims. It's the most important fight on campus today.

And the most important to women, especially to get them up to the board rooms.

June 19 2017 at 7:41 am

Kaya Noble

Sounds like male students at Carleton should be nervous. Thankful my sons aren't there.

June 19 2017 at 8:14 am

Kyle

Can you give us a footnote for that statistic saying 50% of women aged 18-24 are the victim of sexual violence?

June 19 2017 at 3:02 pm

For the Falsely Accused

Preponderance of evidence is a exceedingly low threshold and it becomes even lower in College Adjudications as evidence(the key word) is not often even looked at especially for the falsely accused. The investigations are biased from the onset as the only evidence the Title IX investigator even tries to obtain is for the "alleged victim" The evidence that would exonerate the Male is never even looked for and if found by accident it is often left out of the report. This file then goes on to the Judicial office and the set up a hearing based on this. The accused will get communication often only by email of the date and the protocol. They are told that they can present witness, evidence, and ask questions of the accused in their case only to find out the the review board must approve what they are presenting. They have to submit all information prior to the hearing and that the review board will determine if witness is ok, if the evidence is ok and they will also decide what questions can be asked of the alleged victim. No bias in this process what so ever! There is no way a false allegation can be brought out at a Kangaroo hearing that the schools do. IF accused you must retain an attorney even though they are a potted plant in the hearing, but at least they can somewhat prepare him for the hearing. He needs to go in knowing that all to well he will be held accountable as colleges are so afraid of being reported to the OCR that they tend to always rule for the "alleged Victim". I think that if the inflated statistic that they keep spouting about then the Colleges need to be more aggressive with the alcohol on campus. (but of course that don't want the reputation of being tough on it for fear of declining enrollment). They need to go back to segregated dorms and placing curfews. Obviously this will help the female that embibes in too much alcohol as this will allow her back safely in her dorm without fear of running into the male monster.

We need to all take responsibility for our actions and we are teaching young women that they don't have to. I have even been reading about bystander intervention and young men that don't help are cowards. I don't pay tuition for my son to be a glorified babysitter for drunk young ladies. Drink responsibly or don't drink at all. By making that comment I am victim blaming by some Campus standards!! I have told him that he is not to intervene for any reason in regards to a drunken female. I don't care what is wrong he may call 911 as he is walking away, but get the hell away!!! CPR can be sexual assault on a Campus as he touched her chest without permission. There will be physical evidence to back her story. That fact that she was arresting will most likely be left out of the evidence at the Kangaroo Court. This is how absurd this is becoming. I recent poster that was on a college wall states that any touch no matter how slight is sexual assault if consent was not obtained. That can be virtually anything and the accused is told "we will believe you no matter what"

Colleges are not safe for anyone anymore.

June 19 2017 at 4:43 pm

Kayla McGrady '05

For those who have asked, writer Thomas Rozwadowski has provided links to the Department of Justice and Centers for Disease Control and Prevention websites providing details about the study cited at the beginning of the article. I'll post them here, too:

<https://www.justice.gov/ovw/protecting-students-sexual-assault>

<https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm>

July 15 2017 at 8:53 pm

Susan Pope

I see Columbia University just settled financially with the male student, Paul Nungesser, whom Emma Sulkowicz accused of raping her. Hmmm.

As a prosecutor, I know there are two sides to every story, but I sure wouldn't know it from reading this article in the Voice.

I am distressed to read what passes as journalism in the Voice these days.

July 19 2017 at 1:10 pm

Pondering

Two Carleton students whom have never met had drunken consensual sex. The female files a sexual assault claim for not remembering giving consent (not that the encounter was unwanted). During the investigation, it is discovered that the female introduced herself to the male by groping and kissing him in public. It is also discovered that the female worked vigorously to "revive" the male due to alcohol related performance issues and tiredness. Female does not deny these claims. Carleton's policy is to investigate any new potential violations during the course of fact finding. Ruling: Male expelled. If that's what you called fair and just, I want none of it and will caution everyone with a high school aged son against Carleton being on their lists. Land mine.

August 7 2017 at 2:51 pm

Susan Pope

And then there is this: female student, comes onto male student, captured on video, initiates contact, rape charges dropped but school still investigating because alcohol use can negate consent. Is this what we as women want? To be so utterly incapable of being adult that we need to be protected like children while in college from our own conduct???

<http://www.dailywire.com/news/19406/surveillance-footage-cleared-college-student-rape-amanda-prestigiaco>

August 20 2017 at 8:26 pm

Monica Banks

After reading this article, a few things glaringly stuck out.

This article used the Columbia mattress girl as an example of a survivor when the school settled with the falsely accused male. The public ripped NPR radio a new one after labeling her a survivor because she asked to be identified as one. Can a falsely accused male be identified as such?

The GSC woman (Haave) was quoted as saying she isn't concerned with compliance to protocols. Not good when you are tasked with upholding gov't. Guidance and policies .

She also states that she will believe the victim and never break that trust. Why does Carleton assist the accuser in filing criminal charges before an investigation? Isn't she on the school's title IX committee?

Dunnewold gives several examples of potential policy violations. The male was the perpetrator in all of these situations. Isn't she on the school's title

IX committee?

It was stated that the round table discussion was held in the locker room because it is traditionally viewed as male territory. Title IX provides equal sports opportunities, thus a locker room would be equal ground. Enforcing heteronormative stereotypes much, Carleton?

Common theme here.

November 18 2017 at 11:28 am

Brooke Adams

I'm so tired of hearing how being accused of sexual assault can ruin a man's career. Guess what? Being assaulted has a very negative effect on a woman's life as well. Sexual assault is an under-reported crime. The number of cases in which a man was proven to have been falsely accused is microscopic in comparison to the number of women who are assaulted. All of that said, I'm not sure that the College - or any college for that matter - can do a competent job at adjudicating these cases. In my view, the best role for the College would be to 1) support the survivor, provide him or her with counseling, protection from further assault, and whatever else they need to make it through the term (or their remaining terms at school), and 2) provide the survivor with support in bringing a complaint through the criminal justice system (which admittedly has its own history of handling these cases incompetently). This would remove some of the suspicion about the College's conflict of interest in not wanting to have publicity about incidences of sexual assault on campus and simultaneously take them out of the role of adjudicating felonies.

Spring 2017

May 19, 2017

[REDACTED]
Sent via Email

Dear [REDACTED]

On May 10, 2017, I alerted you that a complaint of sexual misconduct had been filed against you by [REDACTED] regarding a potential violation of the sexual misconduct policy that occurred April 28, 2017. Mary Dunnewold, the College Investigator for Title IX has now interviewed both you and [REDACTED] along with witnesses, and has compiled her final investigative report. I have carefully reviewed the report and determined there is sufficient information to charge you with a violation of the Sexual Misconduct Policy, specifically related to sexual assault. It is alleged that you engaged in sexual contact with [REDACTED] when she was unable to consent due to incapacitation. I will now pull together a hearing board to make a determination if it is more likely than not that there was a policy violation.

According to the investigative report, you do not agree that a violation occurred. You said you believed [REDACTED] was able to give consent and consented to the encounter. As a result, the hearing board will need to determine if what occurred that night rises to the level of a violation of the Sexual Misconduct Policy. You do have the option of taking responsibility, and therefore dedicating the hearing to sanctions only. At this point, the plan is to proceed with you contesting the charge. You have within 5 business days to accept or not accept responsibility for the charge. Please let me know how you wish to approach the hearing.

I have set a hearing date for **May 31, 2017 (5:30pm start)** before the Community Board on Sexual Misconduct (CBSM). As soon as you are able, please let me know if you have any conflicts of interest with the panelists listed in the email which you believe would affect their ability to decide the case impartially. I will then work to finalize the panelists who will hear your case and send you that information.

A copy of the investigative report will be available for you after 2:00pm Monday, May 22, 2017 in the Office of the Dean of Students. When you pick up the report, you will need to sign a copy of the *Carleton – Acknowledgement that the Investigative Summary is Confidential* (also attached for your review). You can review the report and provide in writing any challenges or questions of me by 2:00pm on Wednesday, May 24, 2017. Please note that while this is considered, it won't necessarily lead to changes in the report. Your chance to respond will be at the hearing. When you pick up the report, please also arrange through Kari Scheurer to meet with me in preparation for the May 31 hearing. I encourage you to have your adviser accompany you in our preparation meeting. I will go over a pre-hearing checklist, and the specific hearing procedures and hearing room diagram. This pre-hearing meeting should preferably take place before the end of the day on Friday, May 26, 2017.

Please be reminded to continue to not have contact with [REDACTED] directly or indirectly, as previously directed. The College also prohibits retaliation of any kind because of that individual's participation in the sexual misconduct process. Retaliation includes but is not limited to, abusive, coercive, violent, threatening, intimidating, discriminating or similar actions taken against an individual because of that individual's participation in the sexual misconduct process.

If you have any questions about the next steps in this resolution process, please inquire with me. I also encourage you to utilize support services we have in place at the College or with off-campus resources.

Sincerely,

Amy Sillanpa

Amy Sillanpa
Assistant Dean of Students
Interim Title IX Coordinator

CC: Mary Dunnewold, Title IX Investigator

[REDACTED]

Sexual Misconduct Investigation

██████████ (complainant), ██████████ (respondent)

Report prepared by Mary Dunnewold

Sexual Misconduct Investigator

Carleton College

May 18, 2017

People Interviewed:

██████████ (complainant) ██████████

██████████ (respondent) ██████████

Officer Steve Hanson

Date of incident: April 28, 2017

Location of Incident: ██████████

Documents:

Document 1: Transcript of messaging conversation, planning event

Document 2: Security Video (to be viewed electronically)

Document 3: Security reports from April 28, 2017

Document 4: Text exchange between ██████████

Document 5: ██████████ medical records from April 28, 2017

Introduction

██████████ brought a complaint against ██████████ because she believes ██████████ violated Carleton's Policies against Sexual Misconduct, specifically the provision regarding sexual assault. Specifically, ██████████ states that ██████████ had sexual contact with her when she was incapacitated and unable to consent.

On April 28, 2017, ██████████ and ██████████ both participated in an event on campus between the hours of 2 a.m. and 5 a.m. that involved significant alcohol consumption. The event was organized by a group of Carleton students who constitute a secret club, of sorts. The April 28 event was described both as an initiation and as a scavenger hunt, and involved moving from location to location on campus. The students new to the group were provided with different kinds of alcohol at each stop during the event.

At the end of the night, ██████████ went with ██████████ to his dorm room in ██████████ which is where the sexual contact occurred. ██████████ was in a blackout state during much of the time after about 4 a.m. and does not remember being in ██████████ room. Around 6 a.m., she ended up in the room of students unknown to her, who called security. She was then transported to Northfield Hospital. [Document 3, the security report, details this time, which ██████████ cannot remember.] Security videos show ██████████ and ██████████ entering ██████████ around 5 a.m., ██████████ leaving ██████████ around 6 a.m., and ██████████ in the hall of ██████████ around 6 a.m. [Document 2/videos.]

Document One is a transcript of the event organizers' Group Me conversation while planning and running the event. I have included it here because it contains pictures of the amount of alcohol being purchased for the event and commentary on the event while it is happening.

The allegations brought by [REDACTED] align with a potential violation of Carleton College's Policy against Sexual Misconduct, specifically the sexual assault provision. Carleton's Policy defines sexual assault as follows

Sexual assault is intentional sexual contact with another person without that person's consent.

Sexual contact includes, but is not limited to, intentional touching of the genitals, buttocks, or breasts; coercion to force someone else to touch one's genitals, buttocks, or breasts; penetration of an orifice (anal, oral or vaginal) with the penis, finger, or other object in a sexual manner; or sexual intercourse. Sexual contact can occur over clothing.

Carleton's Policy defines consent and incapacitation as follows:

Consent means the mutual understanding of words or actions freely and actively given by two informed people that a reasonable person would interpret as a willingness to participate in mutually agreed upon sexual activity.

- Consent is not effective when force, threat, or coercion is used.
- Consent is not effective if the recipient party is incapacitated, asleep, or unconscious.
- Silence or non-communication should never be interpreted as effective consent.
- Consent to one type of sexual activity does not imply consent to other types of sexual activity.
- Past consent is not future consent.
- Consent can be withdrawn at any time.

Incapacitation is the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. For example, a person may be incapacitated when asleep or under the influence of alcohol or drugs to an extent that the person is not capable of making a knowing decision. Knowledge of incapacity is evaluated based on a reasonable person standard. Accordingly, if a person has sexual contact with someone whom that person knows to be, or whom a reasonable person would know to be, incapable of making a rational, reasonable decision, that contact violates this policy.

I met with all witnesses in this case in my office. I reviewed the witness First Conversation Checklist with all witnesses except [REDACTED] and [REDACTED] who had reviewed the participant First Conversation Checklist with Title IX Coordinator Amy Sillanpa. I gave all witnesses the opportunity to ask questions. Each witness was given the opportunity to review the written summary of our conversation and suggest changes or additions.

In addition to the witnesses listed above, I met with [REDACTED] and [REDACTED]. Neither offered information that would further elucidate the situation. I also offered to meet with Security Officer Ryan Holicky and Area Director Taylor Morgan, who had filed detailed written reports about their involvement on April 28 [see Document 3]. Both replied that their written reports represented the extent of their knowledge, so we did not meet in person. Officer Steve Hanson also produced a written report detailing his response on the morning of April 28, but he wanted to meet with me to clarify a few details. My brief account of those details is included below.

Participant Interviews

[REDACTED]
I interviewed [REDACTED] in my office on May 5, 2017.

[REDACTED] had never met [REDACTED] before the night of April 28, 2017.

[REDACTED] told me that on Sunday, April 22, she got an email telling her to show up behind the chapel at 2 a.m. on Friday, April 28 (Thursday night/Friday morning). She and other students had also received notes in their mailboxes that said "don't live in fear." She and twelve other students showed up at the appointed time. [REDACTED] was

one of the other twelve students. She thinks they introduced themselves between stops during the night, but she does not remember a conversation with him.

At the meeting point, there was a lot of hard alcohol and a note that told them to finish it all. A student in a ski mask showed up and told them they were free to leave and not participate, but no one left. The alcohol included beer, vodka, and 40s (40 ounce bottles of malt liquor). There may have also been wine. She remembers that there was fireball whisky. They drank the alcohol. [REDACTED] told me she is not sure how much it was, but said it was a lot.

[REDACTED] told me that they were aware that upper class students were watching them as they walked around during the night. She remembers that at one stop, one of the students, who she thinks was one of the upper class students, said everyone had to shotgun beer. She also remembers that one of the upper class students said they were all going to get blackout drunk.

After the first stop, notes led them to four more, different, stops over the next several hours. Each stop included a lot of alcohol, which they were told to drink. [REDACTED] remembers that at the second stop, there was beer and jello shots. At the third stop there was just beer, which they were instructed to shotgun. At the fourth stop there was food (bread, cheese, and rice crispy bars), wine, and a handle of vodka. The fifth stop was a bonfire. [REDACTED] did not remember what alcohol they drank at the last stop.

[REDACTED] told me they were all really drunk, and some people were vomiting by the second and third stops. [REDACTED] told me she remembers some of the conversation at the bonfire, the last stop, but then she blacked out and does not remember anything else.

[Note: Document 1 is a transcript of the message conversation that records the organizing students' preparations for this night, including pictures of some of the alcohol and some narrative of what was happening as the night proceeded.]

I asked [REDACTED] to describe how she felt over the course of the night. She told me that at the beginning she thought it would be fun. She started being uncomfortable at later stops, when people were told they had to take jello shots or shotgun drinks. She said they were at the first stop for about 30 minutes, and they were really drunk by the time they finished at the first stop. At the fourth stop, where there was food, she felt like if she ate she would vomit. She does not remember that she vomited during the event.

[Note: Document 2 is the security video of [REDACTED] and [REDACTED] entering [REDACTED] at about 5 a.m. The security videos also show [REDACTED] wandering the [REDACTED] clothed in only a t-shirt at about 5:54 a.m. and show [REDACTED] leaving [REDACTED] at 5:54 a.m. Document 3 is the combined Advocate Reports that detail the security officer and area directors' interactions with [REDACTED] from 6 a.m. and later on April 28. [REDACTED] does not remember this time because she was blacked out.]

[REDACTED] said she woke up at 10 a.m. on Friday still drunk. She does not remember what had happened in the intervening hours, but told me she has a few flashes of memory. She remembers [REDACTED] naked body on her and him telling her how cute she was. She also remembers falling down at some point and him saying "it's okay, [REDACTED] you gotta walk straight." She remembers being in a dorm room with two unknown students [REDACTED] and [REDACTED] and she remembers the security officer [Officer Hanson] talking. She remembers being strapped into a stretcher, having a blood draw, and having an IV inserted in her arm. [See Document 5—Medical Records.] She does not remember talking in any of these memory flashes. She does not remember vomiting, but when she woke up in her room, there was vomit in her waste bin.

Later on Friday, [REDACTED] texted her to tell her he had her One Card and clothes. She went to his room to pick them up (he was not there.) When she went to his room, she did not remember the room. At that point she started "freaking out." She texted [REDACTED] to ask if they had had sex, and he replied that they had. He also said she had vomited on his floor, which she did not remember. [See Document 4—text exchange.]

[REDACTED] told me that she went to Frisbee practice Friday afternoon, but still felt drunk, despite the fact that she had had IV fluids at the hospital that morning. She started to sober up by about 6 p.m. At that point, she started to

realize what had happened and how dangerously intoxicated she had been. She started getting nervous and scared. She went to security to talk with the security officer in charge [Ryan Holicky] about what had happened that morning, which she did not remember. She, Ryan Holicky, and Steve Romenesko [area director on call at that time] talked for about 30 minutes. [See Document 3—Advocate Reports. There is also a recording of this conversation, in which [REDACTED] expresses surprise when Ryan and Steve tell her what happened the earlier that morning.] Later that night, she decided to go to the hospital for a sexual assault evidentiary exam. [See Document 5—Medical Records.] Security gave her a ride to the hospital for that exam, then gave her a ride home.

[REDACTED] submitted her Northfield Hospital medical records from April 28, 2017. The records show that she was transported to the hospital that morning for alcohol overdose, and that her blood alcohol level that morning was .24 [the legal limit for driving in Minnesota is .08]. [See Document 5—lab results page; ETOH (ethanol) level.] They also provide details about the evidentiary exam.

[REDACTED]
I met with [REDACTED] on May 16, 2017, in my office.

[REDACTED] told me that he did not know [REDACTED] before the April 28, 2017 event. He knew most of the other students there and a couple of them were friends of his.

[REDACTED] told me that on the night of April 28, he participated in an event that involved drinking various kinds of alcohol at different stops. He drank a "fair amount" over 2 to 3 hours, starting at 2 a.m., including malt liquor, beer, and other alcohol. He told me the drinking stopped at about 4 a.m. He told me that at that point, he felt pretty intoxicated, but he could walk and talk with friends. He told me that no one had passed out. He later told me that he vomited at some point in the night, before they got to the park near [REDACTED] the last place they were before [REDACTED]

[REDACTED] told me that he did not interact with [REDACTED] that night until she came up to talk to him. He told me this happened late in the night, after all the event stops, as they were walking from the arb to the [REDACTED]. He had spent most of the night hanging out with his friends, so had not been tracking on her. He said that [REDACTED] came up to him when they were walking towards [REDACTED] and introduced herself, and they exchanged the usual information. They were walking with the group at that point. [REDACTED] told me that [REDACTED] did not have any trouble keeping up with the group while they were walking. He does not know how much [REDACTED] drank over the course of the night because he was sticking with his roommate and not paying attention to her. He told me that everyone was drinking a fair amount. He did not see [REDACTED] vomit at any point.

[REDACTED] told me that as they were walking, [REDACTED] stopped at one point and looked at him, then started kissing him. This was about 10 minutes into the walk. He was "a bit shocked" at first, but he got more comfortable as it continued. He wanted to stay with his friend/roommate [REDACTED] because they both had to go to lifting early in the morning.

[REDACTED] told me that [REDACTED] again stopped at one point and kissed him again, and was reaching down and touching his penis. They were trailing behind the group at this point. He said the group took a break at the park near [REDACTED]. He and [REDACTED] kissed more at the park. They were at the park for maybe 20 minutes. [REDACTED] said he was not comfortable doing this at the park, so they decided to go somewhere else. [REDACTED] suggested they could go to his room in [REDACTED]. They then split off from the group and made their way back to [REDACTED].

I asked [REDACTED] to describe [REDACTED] presentation when they were going to [REDACTED]. He told me there was a bit of stumbling on both their parts, and they were hanging on to each other. But she didn't have any trouble keeping up. They were kissing and talking, back and forth.

At [REDACTED] they were on the couch in [REDACTED] room. [REDACTED] said their clothes started coming off, and they were getting close to having sex. [REDACTED] asked him to get a condom, and he did. [REDACTED] told me that before penetration, he asked her if they were good and she was comfortable with what they were doing. She said she was. [REDACTED] said there was some talking going on with both of them. They were both drunk, but could interact.

I asked [REDACTED] how he knew he had consent. He told me he checked in verbally, maybe twice, and they had the interaction where she asked about a condom. Also, they were kissing and touching, mutually. He also told me that at one point, [REDACTED] got on top of him, grabbed his penis, and inserted it.

[REDACTED] told me that at some point, his roommate [REDACTED] knocked on the room door and told him to hurry up because they had to be at lifting in 15 minutes. He had texted [REDACTED] earlier to let him know he wanted privacy in the room, and [REDACTED] had gone to the lounge. Another roommate had also knocked because he wanted to come in and get his clothes. [REDACTED] told [REDACTED] he had to go, but she could stay and he would be back in an hour after lifting. He told me they were both naked at that point, but she knew where her clothes were and seemed to be okay. He then got dressed. When he left, [REDACTED] was sitting on the couch and seemed to be okay.

[REDACTED] told me that after lifting, he went back to his room and there was vomit on the floor, but [REDACTED] was gone. Her clothes were still in his room. Later that morning, he asked a friend of hers for her phone number so he could text her about her clothes. [See Document 4--texts.] He texted her and told her he had her stuff. They exchanged texts about her coming to get her stuff. She also asked if they'd had sex, and he said they had.

I asked [REDACTED] if he remembered helping [REDACTED] pull up her pants after she peed in the park [as reported by [REDACTED]]. He told me he did remember being there for that, but he was not concerned about [REDACTED]. He told me her pants were hard to get on and off because they were tight.

I also asked [REDACTED] if he remembered others saying "no, [REDACTED] no" as they walked from the park, as reported by [REDACTED]. He told me he had no recollection of that.

I also asked [REDACTED] if he remembered people cheering [REDACTED] on for finishing the Hot 100 when they were still at the [REDACTED] bonfire. He told me he didn't yet know her at that point and does not remember that. He said he was also drinking from the bottle, and he's not sure how much there was left for her to drink. It had been passed around the circle and a lot of people drank it.

I then asked [REDACTED] if he had any responses to the security videos, which I showed him. He noted that in the video of them entering [REDACTED] they are still talking and, he observed, she kissed his neck. Regarding the video of him leaving [REDACTED] he told me he had received a text from his friend about being late to lifting, so he ran to get to lifting.

[REDACTED] told me that hooking up had not been his intention that night. He said [REDACTED] pursued him and initiated the contact.

[REDACTED]

I met with [REDACTED] in my office on May 3, 2017.

[REDACTED] told me that on April 28, 2017, he was up in the early morning hours working on homework. A little before 6 a.m., he went to the bathroom in his triple in [REDACTED] Hall. While he was in the bathroom, he heard the door to the double part of the suite open. He heard his roommate [REDACTED] yelp in surprise, then heard a female voice say "sorry." He didn't hear anything else.

When [REDACTED] finished in the bathroom, he went back into the bedroom, where he saw [REDACTED] gesture towards [REDACTED] bed. In the bed, he saw blond hair under the covers. [He later learned this was [REDACTED] who he did not know and had never met before.]

[REDACTED] told me he went to the bed and spoke to the female student in the bed, trying to get her attention, with words like "excuse me, I don't know you." She said "sorry," but was disoriented and tried to go back to sleep.

[REDACTED] said he spoke to her further, insisting that it was his bed and she could not sleep there, and eventually she got out of his bed. She was wearing only a white T-shirt and underwear, and she appeared to be disoriented and intoxicated. Her face was very red. She was stumbling a bit, but could stand up. She could tell them her name and what she studies. When they asked where she lives, she first told them she lived on [REDACTED] but then said [REDACTED]. When [REDACTED] asked, "so is it first or seventh?" she said [REDACTED]. She later said she lived

in [REDACTED] when asked by the security guard, and reiterated this when [REDACTED] told her that she had said she lived in [REDACTED]. [REDACTED] actually lives in [REDACTED]. She couldn't remember how she got to [REDACTED]. [REDACTED] did not notice that she smelled of alcohol.

[REDACTED] then called security and explained the situation. [REDACTED] waited with [REDACTED] outside the door of the double. He noted that she could stand up on her own while they waited. He made small talk with her to try to keep her calm and keep her there while they waited for security to arrive. She could not remember how she got to [REDACTED] and kept wanting to go into the single that was part of their suite. A security officer arrived at about 6:05 a.m. [REDACTED] and [REDACTED] loaned her sweat pants and a sweatshirt.

[REDACTED] was present while the security officer talked with [REDACTED]. He walked down to the ground floor of [REDACTED] with [REDACTED] and the security officer, where they met the area director on call. [REDACTED] then left with the security officer and the area director.

[REDACTED]

I spoke with [REDACTED] in my office on May 5, 2017.

[REDACTED] told me that in the early morning hours of April 28, 2017, around 5 a.m., he woke up to find a blond, female student kneeling by his bed. [He later learned this was [REDACTED] who he does not know.] She was asking if she could lie down. He was confused and barely awake. At first, he yelled because he was surprised by an unknown person in the room, then he said "okay," because he thought she could lie down, then they would figure out what was going on. She lay down on his roommate's bed. [REDACTED] [REDACTED] did not know how long she had been in the room.

[REDACTED] said that a minute later, [REDACTED] returned from the bathroom and asked what the noise was. [REDACTED] nodded towards the student in [REDACTED] bed. [REDACTED] woke her up and asked her why she was there. [REDACTED] told me she did not have pants on, although was wearing underwear, and she did not know where her pants or her shoes were.

[REDACTED] said they asked her who she was and where she lived. She told them her name. She said she lived in [REDACTED] he thinks, but he remembers that they looked her up and her report about where she lived was incorrect. He and [REDACTED] convinced her they should call security. They called security, then loaned her a hoodie and sweatpants.

[REDACTED] told me [REDACTED] face was very red. She could talk, and her words were not "super slurred," but she was not making a lot of sense. He also noted that she changed her recollection of where she lived as they talked. She could walk, but she was sluggish. She told them she had gone to a party with friends, but had been separated from them. She smelled somewhat like alcohol.

[REDACTED] said they kept an eye on her just outside the room while they waited for security to arrive. When security arrived and asked her questions, she did not know where she lived or where her clothes were. [REDACTED] went down to the ground floor with her and the security office. [REDACTED] then got dressed and followed. The whole incident lasted about 30 minutes.

[REDACTED]

I spoke with [REDACTED] on May 11, 2017 in my office. [REDACTED] met [REDACTED] at the event on the night of April 28, 2017. She knew others in the group and considered some of them close friends.

[REDACTED] told me first that she was pretty drunk during much of the night and did brown out for certain parts. But she said she has flashes of memory from certain times during the night, and she remembers being with [REDACTED] at particular times.

[REDACTED] told me that she introduced herself to [REDACTED] at the first stop, the [REDACTED] when the event started at about 2 a.m. They were both excited to find out what this was about. The organizers discouraged them from having their

phones out during the night because they didn't want to attract attention with the lights, so she lost track of time over the course of the night and is not sure when she got home. She remembers some conversations with [REDACTED] during the night and remembers giving [REDACTED] cigarettes several times.

[REDACTED] told me that she remembers [REDACTED] going from kind of drunk to really drunk in a way that surprised [REDACTED]. She recalls that this was when they were outside Goodsell [the third stop of the night]. The next memory of [REDACTED] has is near [REDACTED] [where the group was around 4:30 a.m.], at the playground equipment in Central park. [REDACTED] said she remembers thinking that [REDACTED] was really drunk at that point. She was acting "really happy," dancing and rolling on the ground. [REDACTED] said she also remembers that [REDACTED] fell at some point and was stumbling.

[REDACTED] then told me that when [REDACTED] fell, both she and [REDACTED] helped her up. [REDACTED] noticed at that point that [REDACTED] was sticking by [REDACTED]. [REDACTED] told [REDACTED] that she needed to pee, so [REDACTED] helped her prop herself against a tree and pull down her pants. [REDACTED] could not do this on her own because she was so drunk. [REDACTED] was also with them, and [REDACTED] told him to go pee at a different tree, because she wanted [REDACTED] to have some privacy. She noticed that after [REDACTED] was done peeing, he was then standing behind them as [REDACTED] finished. [REDACTED] had to help her pull her pants up because she could not do it herself.

[REDACTED] told me that she and [REDACTED] were then both holding [REDACTED] up as the group walked from [REDACTED]. She is not sure how she got separated from them. She remembers that [REDACTED] and [REDACTED] were still in the group, but were walking slowly, and were behind her. [REDACTED] and [REDACTED] were flirting, and she remembers thinking that they were going to hook up. But she knew [REDACTED] was really drunk and that was not a good idea. She turned around and saw that they had gone from [REDACTED] holding [REDACTED] up to making out in the middle of the street. [REDACTED] yelled, "No, [REDACTED] no," because she thought that was a bad idea, given [REDACTED] level of intoxication. That is she was so drunk she couldn't walk alone or pull up her pants. The group they were with then also started saying "no, [REDACTED] no." This was said by maybe two other people and [REDACTED] not the entire group and it carried a sort of joking tone to it, but also serious as well. [REDACTED] told me she remembers [REDACTED] saying this. They then got separated because a car appeared, and people freaked out and went in different directions. She did not see [REDACTED] and [REDACTED] again that night.

[REDACTED] also told me about how much alcohol they drank over the course of the night. She said at the first stop at 2 a.m., there were three or four 40s (40 ounce malt liquor), about 5 handles of hard alcohol, including Fireball whisky, and champagne. The group of twelve drank all of it in about 30 minutes.

At the second stop, there were jello shots and a case of beer. They all had 3 or 4 jello shots and they all took beer as well. At this stop, [REDACTED] threw up, because she knew if she didn't she would get too drunk. At the third stop, there was beer, which they shot gunned. [REDACTED] told me she was done with drinking at this point and threw her beer out. This was at Goodsell.

[REDACTED] told me that after that, they ran around campus some, then went to one of the islands, where they had cheese and bread. More alcohol was going around, but she is not sure what it was. She said she had a few swigs, but it didn't taste good. The event organizers were encouraging them to eat. They then went to the hill of three oaks, where there was a lot of socializing and meeting people. [REDACTED] was still drinking at that point. The last stop was a bonfire in the arb, where a handle of alcohol was going around. After that, they walked out of the arb and around campus, then ended up at the playground outside [REDACTED] waiting for the [REDACTED] to open.

At that point, some people had needed to go home because they were so intoxicated, and many people were really drunk and needed to be held up. During the night, everyone had been encouraged to have a buddy to check in with them. [REDACTED] did not know who [REDACTED] buddy was.

[REDACTED] told me that she remembers that [REDACTED] was really drunk during the night as well. She recalls that he drank at every stop, and he shot gunned multiple beers.

██████████

I met with ██████████ in my office on May 12, 2017. ██████████ knew ██████████ before April 28, 2017, They both play Frisbee and have some mutual friends.

██████████ told me that about a week before the April 28 event, he got an email telling him he had been selected for a secret group and he should not tell anyone. He was told to meet at the Japanese Garden at 2 a.m. on April 28 and to come sober. He then got several cryptic notes in his mailbox over the week. He had no idea what was going on, what the event would be, who would be there, or what the intent was.

██████████ told me that he went to the garden at 2 a.m. on the 28th, as instructed. ██████████ was there, and ██████████ was there, as well as other "initiates." There was a box of alcohol that included 40s (40 ounce malt liquors), Fireball, and champagne. ██████████ told me it was "tons of alcohol." There was also a note welcoming them to "the night that never happened." A person showed up and told them that if they wanted to leave, they should leave now, then counted down from 5 to 1. No one left. They were told to drink all of the alcohol, and they did. They passed the bottles around. They drank it all in about 30 minutes.

██████████ told me he got very drunk right away. They then went to the tennis courts, where they all consumed jello shots. ██████████ said he got even drunker, and things started to get hazy. Next they went to Goodsell, where there was a case of beer. They consumed the beer, including shot gunning it. Next they went to Stewsie Island, where there was more alcohol, and also bagels. ██████████ does not remember what kind of alcohol was at this stop. Then they went to the hill of three oaks, where they were given Bud Lite limaritas to drink. Finally, they went to the Druid circle in the arb, where there was an initiation ceremony of sorts. He did not remember if there was more alcohol there.

██████████ told me he was as drunk as he had ever been in his life. He couldn't really pay attention to his surroundings, and he did not track on how much ██████████ was drinking or what condition she was in. He completely blacked out during part of the night and has no idea how he got home. He can't say exactly how much alcohol they drank, but he described it as "huge."

██████████ remembers talking to ██████████ at the first stop and then again when they were near ██████████ at the end of the night. He said during the night, they were "all sheep"—not really talking, just following instructions to drink. He said that at ██████████ was standing, but he does not remember if she was coherent. ██████████ was also present during the night, but ██████████ does not remember if he was at ██████████

██████████ said he decided he did not want to be part of the group, and he let them know that in the Group Me conversation.

██████████ told me that ██████████ reached out on the following Sunday through Facebook, wanting to talk about the night. They met up, and she told him she had received a text telling her where her clothes were and that she could come get them. She told ██████████ about what had happened to her during the night, and that she had blacked out. She did not name ██████████ at that point. She said she did not understand why no one walked her home, given how drunk she was. ██████████ said the group just let them wander home alone, and he himself was so drunk he could have ended up in the street. They talked again a few days later, and ██████████ did his best to be supportive. He learned that the person ██████████ had been with that night was ██████████ when he approached a friend of hers to ask if she was okay.

██████████

I spoke with ██████████ on May 11, 2017, in my office. ██████████ told me she met ██████████ a few weeks earlier at a party. She does not know her well.

██████████ told me that on April 28, 2017, between about 2 and 5 a.m., she participated in the drinking activities that ██████████ was also involved in. The participating students visited several stops around campus during that time, and at each stop they consumed alcohol. ██████████ told me it was quite a lot of alcohol, but she was not able to estimate how much. The group was sharing it out of bottles, so it was hard to quantify. It involved a mix of some liquor, some beer, and some shots.

█████ said that once they finished everything in one spot, there would be a note directing them to go to another spot, where they would drink more. She said that the organizers also provided food and water, and that the drinking was voluntary. They were constantly reminded that they could stop or leave at any time.

█████ told me that all of the participants got very drunk, and she herself was very drunk. She has no clear image of how drunk █████ was, and she had no reason to be paying particular attention to █████. Some people in the group were vomiting and were taken home and taken care of. She does not remember █████ vomiting, and she did not see who █████ left with.

█████ said she went home around 4:30 or 5:00, with a few others. She said people were mostly going home in groups, and nobody was left behind. She said she does not remember a lot of the end of the event, but she was able to get back to her room.

█████
I met with █████ in my office on May 15, 2017. █████ told me that she did not really know █████ before that night. █████ told me she is good friends with █████ and has known him since fall of their freshman year. She sees him pretty much every day, and they go out a lot.

█████ told me that on the night of April 28, 2017, there was a lot of drinking over the course of the night. It was clear that no one had to drink and people could leave. She went into the evening feeling comfortable with it. She got pretty drunk over the course of the night, but was not "crazy drunk." She did not black out and did not vomit.

█████ told me that during the night, she mostly was hanging out with █████. █████ was drinking, like the others. She said he and █████ had lifting in the morning, and they were aware of that when they were drinking. She recalls that █████ was not slurring his speech or having trouble walking. They go out together a lot, and he seemed to be at about the same level of intoxication as other times.

█████ said she lost track of █████ and █████ towards the end of the night because people were bouncing from group to group.

Regarding █████ told me that she may have met her earlier in the evening. She does not remember seeing █████ and █████ together. She did not communicate with █████. She did not have any observations of █████ towards the end of the evening, and she was not part of the group hanging out near █████.

█████
I met with █████ on May 11, 2017, in my office. █████ has been in two classes with █████ but does not know her socially. They have not spoken at all about this situation.

█████ told me she participated in the drinking event that occurred in the early morning hours of April 28, 2017. She said she was not really with █████ during the night, just in the group as a whole. She remembers talking to █████ at the beginning about coming to the event, before any drinking started.

█████ told me that the event began at about 2 a.m. She was present for maybe 2 hours. She said everyone got very drunk, but nothing stood out about how drunk █████ was. █████ said there was definitely irresponsible drinking going on, but she cannot guess how much they drank. The drinking included beer and hard alcohol, drunk from the bottle. █████ said all of the drinking was voluntary. It was her choice to participate, and there was nothing out of the ordinary going on. That is, it did not feel scary or weird.

█████ said the event was being fun, then she started to feel sick. She vomited, and she does not remember much after a certain point. Some of the organizers helped her get home.

██████████
 I met with ██████████ on May 15, 2017, in my office. ██████████ knew ██████████ only in passing before April 28, 2017. He knew she played Frisbee and they were casual acquaintances.

██████████ told me he did not interact with ██████████ most of the night of April 28. He remembers having a conversation with her at the ██████████ which was fairly late in the night. They talked about the event, e.g. the nature of the scavenger hunt. ██████████ said he could tell ██████████ was intoxicated at that point, but she was able to converse, and she was asking questions. He does not remember observing ██████████ walking, but told me he could tell from her speech pattern that she was drunk. But she was not slouching, and she was laughing and smiling.

██████████ told me he was at ██████████ with others towards the end of the night, but only because he was heading home and he lives near there. He did not see ██████████ at that point.

██████████ told me he could not say how much ██████████ drank over the course of the night because his role was watching how people were doing and getting them to the next stop. While he was occasionally around the group while they drank, he was not monitoring any one person in particular. There was a lot of activity going on so it was difficult for him to get a sense of each person's level of intoxication.

██████████ told me that he also drank some during the night, and he described himself as "very drunk." He had probably about 6 drinks over about 4 hours, between midnight and 4 a.m., when he left.

██████████

I met with ██████████ in my office on May 16, 2017. ██████████ did not know ██████████ before April 28, 2017. He knows ██████████ because they are both athletes, and ██████████ dated a friend of his.

██████████ told me that on April 28, he was not with the group the whole night. He was one of the organizers, and was in charge of checking in on people at the island stop and supervising the bread, cheese, and bagels provided there. He did not see people drinking at earlier stops. He told me he also drank two cups of caffeinated tea at this location, which offset the affect alcohol may have had on him.

██████████ told me that after the island stop, where he was, the whole group went to the Hill of Three Oaks. He recalls that a few people were drinking there. They then all came together at a bonfire at the ██████████ in the arb. He remembers that there was wine there, which people were drinking. He also told me he clearly remembers that at the bonfire, there was a bottle of Hot 100, which is 100 proof alcohol. The bottle was passed around, and ██████████ finished it. He is not sure how much was left at that point or how much she consumed. He does remember that people cheered her as she finished it. That was the end of the drinking for the night.

██████████ told me that at that stop (the bonfire), ██████████ was "pretty good"—that is, in control of her faculties. He did not converse with her, but she seemed "cognizant," and he observed her talking to others.

██████████ said that after the fire, they cleaned up and walked across campus. At first, ██████████ was walking and talking with ██████████. He recalls that at some point, maybe near the Rec Center or Goodhue, she started walking with ██████████. They had their arms around each other's shoulders, as did others, because people were tired.

██████████ told me that he was with a group near ██████████ after the event. He remembers last seeing ██████████ and ██████████ when they all were walking towards that part of campus, near admissions and ██████████. He does not know where ██████████ and ██████████ went after that. He does not remember that they were at the playground near ██████████ when he was. At that point, a lot of people had split off and gone home. Also, the group near ██████████ had gotten split up because security showed up and they scattered.

██████████ told me that ██████████ was definitely intoxicated that night. At the bonfire, he was doing "pretty well." ██████████ said ██████████ had a midterm the next day and was conscious of not getting too intoxicated.

█████ said he himself drank just a little bit during the evening. He had a beer during the planning at about 12:15 a.m. He remembers that he had a little wine at the bonfire.

█████
I met with █████ on May 16, 2017, in my office. █████ met █████ freshman year. They are friends and roommates. █████ has seen █████ around, but has never had a conversation with her.

█████ told me that on the night of April 28, 2017, he participated in the event on campus that involved a lot of drinking. It involved drinking beers at multiple location, jello shots, wine, and hard alcohol. He doesn't remember what kind of hard alcohol, although he mentioned drinking a couple of shots of Fireball.

█████ said he was with █████ most of the night. █████ was drinking more than he was. █████ had a midterm the next day and was trying to moderate what he drank. He recalls that █████ was drinking with the group, but he does not know how much she drank. The drinking occurred between 2 a.m. and 4 or 5 a.m. █████ said he did not recall ever seeing █████ vomit. He did see a couple other people vomit.

█████ told me that he went back and forth between hanging out with █████ and hanging out with other friends. He remembers that when the group was walking from the arb to █████ at the end of the event, he saw █████ starting to interact with █████ They were in front of him. It seemed like a normal conversation. They were pretty close to each other, smiling and enjoying themselves. █████ told me that █████ and █████ left the group towards the end. He did not see them leave.

█████ said █████ seemed relatively drunk during the walk towards █████ All of the students new to the group were drunk; all had been drinking over the course of the night. █████ did not have a conversation with █████ although he may have been introduced at some point during the evening.

I asked █████ if he was part of the group hanging out at the park near █████ at the end of the night. He told me he remembers hanging out in the park, but he does not remember if █████ and █████ were there. He said if they were there, it must not have been a very long time. He thinks they left the group around that time. When he last saw them, they were talking. He did not see them kissing. He does not remember anyone saying "no, █████ no."

█████ said he went home at about 4:45 or 5:00 a.m. █████ was at their room at that point, with █████ █████ had texted him to tell him they were going to the room, so █████ went to the lounge. He did not see █████ at █████

Regarding his own state of intoxication, █████ told me that by the end of the night, he was fairly drunk. But he walked home by himself with no problem.

█████
I met with Officer Steve Hanson on May 12, 2017, in my office. Officer Hanson responded to the first call to security on the morning of April 28, 2017. His account is detailed in the security report document [See Document 3]. But he wanted to meet with me to follow up on a few details.

Officer Hanson told me that when he responded to the scene and interacted with █████ she could not tell him how she got to █████ or who she had been with. She was conscious, but clearly intoxicated. She could not really construct sentences. She was wearing only a t-shirt. He was surprised that she could walk, given how intoxicated she seemed.

As detailed in his report, Officer Hanson eventually called for an ambulance, and the police also arrived. They asked her questions to evaluate her level of intoxication and whether she needed to be transported. Officer Hanson told me that when they asked █████ who the president was, she told them Steve P. They asked her again, and she told them Bush. The EMTs determined that it was not safe to leave her alone, so they transported her.

Information about Security Videos

Four security videos show [REDACTED] and [REDACTED] entering and moving around in [REDACTED] on the morning of April 28. These videos are included in this report as Document 2. It may be most helpful to view the videos in chronological order, as follows.

[REDACTED] **South Entrance at 5:04 a.m.** Video shows [REDACTED] and [REDACTED] entering [REDACTED] through south entrance (view at 18 seconds)

[REDACTED] **South West Stairway at 5:05 a.m.** Video shows [REDACTED] and [REDACTED] entering [REDACTED] southwest stairwell (view at 20 seconds)

[REDACTED] **East Entrance at 5:53 a.m.** Video shows [REDACTED] pass through [REDACTED] east entrance hall (view at 7 seconds), then shows [REDACTED] in the east entrance hall (view at 1:04)

[REDACTED] **South West Stairway 5:54 a.m.** Video shows [REDACTED] leaving through southwest stairwell (view at 17 seconds)

April 28, 2017 Approximate Timeline

2 a.m. Group gathers at Zen Garden

2 a.m. to about 4:00 a.m. Group travels to 5 stops on campus (Zen Garden, tennis courts, Stewsie Island, Hill of Three Oaks, Druids' Circle). [REDACTED] reports being in state of blackout starting at last stop—bonfire at Druids' Circle.

4:00/4:30 a.m. Some portion of group, including [REDACTED] and [REDACTED] walk from arb to playground near [REDACTED] [REDACTED] reports that [REDACTED] and [REDACTED] begin to interact during this walk.

4:30 a.m. [REDACTED] and [REDACTED] spend some amount of time at playground near [REDACTED] with other members of the group.

5:05 a.m. Video shows [REDACTED] and [REDACTED] entering [REDACTED] through south entrance (view at 18 seconds)

5:06 a.m. Video shows [REDACTED] and [REDACTED] entering [REDACTED] southwest stairwell (view at 20 seconds)

5:53 a.m. Video shows [REDACTED] pass through [REDACTED] east entrance hall (view at 7 seconds), then shows [REDACTED] in the east entrance hall (view at 1:04)

5:54 a.m. Video shows [REDACTED] leaving through southwest stairwell (view at 17 seconds)

6:00 a.m. [REDACTED] appears in [REDACTED] and [REDACTED] room. They call security.

6:05 Security arrives (see Document 3)

6:40 a.m. [REDACTED] transported to Northfield Hospital

10:30 p.m. [REDACTED] meets with Security Officer Ryan Holicky and Area Director Steve Romenesko to review events of the morning.

11:30 p.m. [REDACTED] requests ride to Northfield Hospital for SANE nurse exam

Investigative Analysis

The panel must decide whether Respondent violated Carleton's Policy Against Sexual Misconduct by engaging in sexual contact with Complainant when she was incapacitated and unable to consent to sexual activity. As a reminder, under Carleton's policy

Incapacitation is the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. For example, a person may be incapacitated when asleep or under the influence of alcohol or drugs to an extent that the person is not capable of making a knowing decision. Knowledge of incapacity is evaluated based on a reasonable person standard. Accordingly, if a person has sexual contact with someone whom that person knows to be, or whom a reasonable person would know to be, incapable of making a rational, reasonable decision, that contact violates this policy.

Thus, according to this definition, for a policy violation to occur, Complainant had to have been incapacitated—unable to make informed, rational judgments—and Respondent had to know that she was. That is, a reasonable person had to have known that Complainant was incapable of making a rational, reasonable decision to participate in the activity.

The parties agree that they participated in the drinking event on April 28, 2017, starting at 2 a.m. They agree that they both drank significant amounts of alcohol during that time. Witnesses also stated that students at the event drank significant amounts of alcohol during that 2 to 3 hour period.

The parties also agree that they had sex in [REDACTED] dorm room between 5 and 6 a.m. on April 28. [REDACTED] however, does not remember this, although she has a flash of memory about [REDACTED] naked body being on top of her. [REDACTED] confirmed in texts to her later in the day on April 28 that they had sex that morning.

[REDACTED] disagrees that [REDACTED] was incapacitated and unable to consent to sexual contact. He states that [REDACTED] was talking okay and conversing with him. He said they were both having some instability with walking, but she did not have trouble keeping up. When he viewed the security videos of them entering the dorm, he commented that [REDACTED] was kissing his neck in the video and they were talking.

[REDACTED] also states that [REDACTED] in fact consented to the activity. He stated that she initiated the contact, was responsive during their interactions, and asked him to get a condom. [REDACTED] has no memory of these events.

Thoughts for the Panel to Consider

The panel will need to determine whether [REDACTED] was incapacitated and if so, whether a reasonable person would have known that. Generally, the panel may want to consider whether at the time of the sexual contact, [REDACTED] knew who she was, where she was, and what she was doing—factors that can determine incapacitation. The panel may also want to consider whether [REDACTED] walking and talking were impaired. When drawing conclusions, the panel may want to consider the security video, the report of the students whose room she entered around 6 a.m., [REDACTED] blood alcohol level, as indicated in her medical records, and the description of events in the Advocate Reports [Document 3], as well as the other evidence presented. Because a reasonable person standard applies, the panel should also consider, based on the witness reports and the documents, whether [REDACTED] had the opportunity to observe [REDACTED] demeanor and presentation.

Ultimately, the panel must determine whether [REDACTED] had the necessary judgement to make a rational, reasonable decision to engage in sexual contact. If she could not, would a reasonable person—[REDACTED]—have known that.

To the extent there are different accounts of the events, the panel will have to make a credibility assessment to determine which version is more reliable. In evaluating each account, the panel may want to consider whether (1) it is plausible, (2) it is corroborated, (3) the witness reported the account to anyone close to the time of the events, (4)

the witness has a motive to lie about their account, (5) other details make the account more or less likely, and (6) the witness has a past record of behavior that would either substantiate or refute the account.

██████████
██████████ met with me in my office on May 22, 2017. ██████████ was one of the organizers of the event on April 28, 2017. He told me he did not drink during the night, so all of his observations were made while sober. He knows ██████████ "vaguely," from around campus. He knows ██████████ because they were on the same floor their freshman year.

██████████ told me that he does not remembering seeing either ██████████ or ██████████ much over the course of the night until the bonfire at the ██████████ and neither's behavior stood out. At the bonfire, ██████████ had a conversation with ██████████ in which she was talking about their freshman year and recalling information about others on their floor. ██████████ told me that she was able to converse about specific details during that conversation.

██████████ told me that after the bonfire, he was walking near ██████████ and ██████████. He told me they were both intoxicated, and they were walking with their arms around each other's shoulders. They were chatting. They were not walking in a perfect line and were providing each other some support. But they seemed able to walk fine and neither stumbled or fell. ██████████ told me that he does not remember seeing either ██████████ or ██████████ after the group walked through the ██████████ area.

Carleton College

One North College Street
Northfield, Minnesota 55057

Office of the Dean of Students

507-222-4075
FAX 507-222-5549

June 2, 2017

[REDACTED]
Via Email

Dear [REDACTED]

On Wednesday, May 31, 2017, you participated in a resolution meeting before a panel of the Community Board on Sexual Misconduct (CBSM), related to sexual assault from an incident on April 28, 2017 involving [REDACTED]. [REDACTED] filed a complaint for an adjudicated resolution and you were notified of the complaint on May 10, 2017. The CBSM heard the information presented in the investigative report and listened to both you and [REDACTED].

The CBSM found there was a policy violation of the sexual misconduct policy, specifically related to the policy of Sexual Assault. I communicated this decision to you in person following the conclusion of the hearing, and this letter serves as the official notification of the panel's decision. The panel determined that it was more likely than not that [REDACTED] was incapacitated, therefore could not consent.

As a result of their findings, they have sanctioned you as follows:

1. Suspension for three terms (Fall 2017, Winter 2018, Spring 2018): *Termination of a student's enrollment at the College for a specified period of time.* During the suspension period you are not to be on the Carleton College campus.
2. Mandated education: You must complete a required education/training around topics of sexual misconduct. Specific training to be determined in consultation with appropriate staff in the division of student life.
3. The no contact order with [REDACTED] will remain in place while [REDACTED] is enrolled at Carleton College.

[REDACTED] you do have the right to appeal the decision of the board. An appeal must be made in writing to me within five business days of this written notification (due by 5pm on Friday, June 9, 2017). Appeals are accepted on the basis of one or more of the following, which must be outlined in the appeal request:

- 1) procedural errors that may have substantially impacted the final decision;
- 2) relevant new information that was not available at the time of the resolution meeting, and would have substantially affected the Panel's decision; and/or
- 3) the sanction is inconsistent with the seriousness of the offense.

As stated previously, the No Contact Order will continue to remain in effect. All NCOs are mutual. In other words, any student(s) on one side of an NCO is prohibited from contacting any student(s) on the other side of the NCO. As discussed in the investigative phase, retaliation against anyone involved in this investigation/ resolution process is prohibited at any time and would be considered a separate incident of misconduct that the College would need to pursue. Retaliation includes but is not limited to, abusive, coercive, violent, threatening, intimidating, discriminating or similar actions taken against an individual because of an individual's participation in the sexual misconduct process.

If you have any questions about this letter or about details moving forward, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Amy Sillanpa". The signature is written in a cursive, flowing style.

Amy Sillanpa

Assistant Dean of Students, serving as CBSM Chair & Interim Title IX Coordinator

Cc:

A black rectangular redaction box covering a name.

Carolyn H. Livingston, Vice President for Student Life/Dean of Students

A black rectangular redaction box covering a name.

From: [REDACTED]
To: Interim Title IX Coordinator, Amy Sillanpa
Date: June 9, 2017
Re: Appeal of Finding of Sexual Misconduct and Suspension

Introduction:

I respectfully am appealing the decision of the CBSM Panel because the panel's decision, finding me responsible for a violation of the sexual misconduct policy, was an erroneous finding. As detailed below, the allegation that I committed sexual misconduct is false.

I am appealing the decision based upon the following:

1. The procedure used by Carleton College (Carleton) did not meet the requirements established by the Department of Education's Office of Civil Rights (OCR) and resulted in procedural errors which substantially impacted the decision.
2. The CBSM Panel did not have all of the relevant information pertaining to my intoxication and the relative incapacitation of the parties.
3. The sanction is inconsistent with the seriousness of the offense based upon the facts alleged.

I was provided with the written notice that the CBSM Panel determined that I had committed a violation of the sexual misconduct policy. The only stated rationale provided in the written notice was that it was more likely than not that [REDACTED] was incapacitated and therefore could not consent to sexual conduct. In addition, when the decision of the hearing panel was verbally communicated to me by Amy Sillanpas, the Carleton Interim Title IX Coordinator, she did indicate that the panel had based their decision that I had violated the sexual misconduct policy on [REDACTED] blood alcohol content (BAC) as well as her "unusual behavior" after I left the dorm that morning. No further information or rationale for the decision was ever provided to me.

- 1. The procedure used by Carleton College did not meet the requirements established by the Department of Education's Office of Civil Rights (OCR) and resulted in procedural errors which substantially impacted the decision.**

I clearly have been erroneously found responsible for sexual misconduct. As the record clearly indicates, I did not initiate sexual conduct with the Complainant. She was the aggressor and the one who initiated the conduct at all times. I was very conscious of the fact that sexual conduct requires consent and sought consent from her numerous times. She clearly and emphatically gave her consent to all sexual activity. No one, including the Complainant, alleges that I engaged in sexual conduct through force, threats or coercion. There was no testimony provided that contradicted my testimony that the Complainant consented to the sexual activity.

The OCR has stated in their published guide entitled *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Department of Education, Office of Civil Rights, January 2001:

The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. (*OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001). <https://www.federalregister.gov/documents/2001/01/19/01-1606-revised-sexual-harassment-guidance-harassment-of-students-by-school-employees-other-students-org>).

Title IX is a federal law and is the basis for the conduct policy being applied in an erroneous and unfair manner against me to deprive me of my right of access to education. It is my understanding that courts apply the rationale stated by the Second Circuit Court in the *Yusuf* case when evaluating Title IX claims brought by students who allege that their school disciplined them based on an erroneous finding that they engaged in sexual misconduct. *Yusuf v. Vassar Coll.*, 35 F.3d 709, 714-16 (2d Cir. 1994). These types of disputes involve a student that "asserts that he or she was innocent and wrongly found to have committed the offense. . . (or) regardless of guilt, the severity of the penalty was affected by the student's gender." The courts have found that these erroneous outcome claims can be based on either: 1) the discipline of students who did *not* engage in sexual misconduct; or 2) *students who may have engaged in misconduct*, but were disproportionally disciplined because of their male gender.

Carleton College has clearly promised all Carleton students that they will establish and enforce policies that are "fair in execution". On the Carleton College website they state that "Carleton College is committed to:

- Fostering a safe environment, free of sexual misconduct in any form. We expect community members to engage in relationships and sexual interactions that are characterized by consent. Individuals who engage in behaviors that violate Carleton's Policy against Sexual Misconduct are held responsible for their actions.
- Responding to reports of sexual misconduct through established procedures that are comprehensive in scope, supportive in approach, and fair in execution. Support will be provided before, during, and after any adjudication, recognizing that for all parties affected by an instance of sexual misconduct—alleged or proven—the experience is emotionally, socially, and intellectually demanding."
(https://apps.carleton.edu/handbook/community/?policy_id=18308)

While Carleton has stated their desire to adhere to this standard, they have failed as it is clear that the process they use in the investigation and adjudication of these issues was, as applied in my case, not "**fair in execution**". In addition, the process employed by Carleton in the adjudication of sexual misconduct is fatally flawed in several ways.

a. Denial of Access to the complete Witness Statements and Investigative File

In my case, the process as articulated in Carleton's "Student Sexual Misconduct Resolution Process" was not followed and therefore the decision should be voided. Specifically, the process requires that "[t]he ...Respondent will be provided timely and equal access to any information that is available during the Resolution Process." (Student Sexual Misconduct Resolution Process, Page 5, Subpart C). The policy further provides that, in preparation for the CBSM hearing the Title IX Coordinator will make "the investigative report and accompanying documentary or other evidence available to the panel members and to the parties." (Student Sexual Misconduct Resolution Process, Page 8 (d)(iii)). Additionally, OCR recommends that recipient institutions such as Carleton provide accused students with a procedure for appeal and instructs recipient institutions to "maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings." These recommendations are meant to ensure that decisions unsupported by available evidence will not stand.

The Carleton Sexual Misconduct Policy, as applied, violates the requirements as established by the OCR by failing to provide me with the full investigative file, by failing to provide me with the opportunity to call witnesses in my defense and by prohibiting me from asking any questions of the Complainant or the witnesses. In fact, as I was a part of the group message following April 28th, I am able to view the complete chain of the group message. The group message as submitted by the Investigator to the CBSM Panel is incomplete and has deliberately omitted important messages. This makes me wonder what other parts of witness statements have been omitted because they did not support the conclusion that the investigator wanted to reach in her report. It is exactly because of this concern that the OCR directs that the accused party be given the full investigative file. Anything less constitutes bias and deceptive handling of the investigation. Any decision reached by the CBSM Panel is the result in part of the biased investigation and resulting report. (See attached copies of messages and photos omitted by the Investigator).

b. Denial of Opportunity to call Witnesses

I was advised that the investigator would contact and meet with the witnesses. I was further advised that I could not call any witnesses at the hearing. I was also not given the opportunity to ask any questions of the witnesses called by the investigator nor was I ever given access to the full statements taken from the witnesses. The only information provided to me was the selected information contained within the Investigative Report.

The Hearing Panel's decision should be reversed because the violation of my rights under Carleton's policies and Title IX triggered reversible procedural error. On April 29, 2014, the OCR made public a document entitled "Questions and Answers about Title IX and Sexual Violence". This document was published to clarify college's legal requirements to comply with the April 4, 2011 "Dear Colleague" letter on sexual violence. Schools must have grievance procedures and policies that provide "provisions for "adequate, reliable, and impartial investigation of complaints," including the opportunity for both parties to present witnesses and evidence.

The Carleton investigator failed to investigate this matter in a neutral and impartial manner as required by federal law which resulted in an unfair and biased written report against me. This report, with the exception of the Complainant and my testimony, was the only evidence presented to the hearing panel. At no time during the process was I ever given an opportunity to call witnesses to testify nor was I given an opportunity to review the information collected by the investigator other than the final investigative report. Individuals were interviewed by the investigator but their full statements, and in some cases the full content of the statements, were not included in the final Investigative Report. The full content of the investigative file, and primarily the witness statements, were neither provided to me before the hearing nor after the issuance of the decision even though a specific request was made for access.

The process employed by the investigator prohibited me from discovering, gathering or eliciting potentially exculpatory evidence from any of the witnesses. This process created a biased report designed to shift the burden of proof of a violation onto me requiring that I prove my innocence rather than requiring that the school prove my a violation occurred. This is in clear violation of the rules established by the Department of Education's Office of Civil Rights and is patently unfair.

c. Denial of Right to Question Witnesses or engage in Cross-Examination

The Carleton Sexual Misconduct Policy and procedures do not provide a student accused of sexual misconduct any opportunity to ask questions of witnesses or the Complainant. The denial of any opportunity to question the testimony of witnesses or the Complainant deprived me of the essential due process right of cross-examination. The ability to call witnesses, as well as the opportunity to cross-examine the Complainant and the witnesses, is crucial to a fair and unbiased process. Carleton provided no mechanism by which I could ask questions or even suggest questions to be asked during the process. This denial of due process created a fundamental flaw in the fairness of the process.

In the Investigative Report, [REDACTED] provides clearly inaccurate information which is not corroborated by any of the other witnesses who were present during the events of April 28. Specifically, she indicated that at approximately 4:30 AM the Complainant was "dancing and rolling on the ground" and that the Complainant "fell at some point and was stumbling." Even more troubling is her testimony that she and I were holding the Complainant up at one point which no other person present recalls. The most troubling part of [REDACTED] statement is her allegation that when she saw that the Complainant and I were kissing in the street she yelled, "[n]o, [REDACTED] no" and that "[t]he group they were with then also started yelling 'no, [REDACTED] no'. This was said by maybe two other people and [REDACTED] not the entire group and it carried a sort of joking tone to it, but then serious as well. [REDACTED] told me she remembers [REDACTED] saying this." (Investigative Report prepared by Mary Dunnewold, May 18, 2017).

No other person present that night corroborated [REDACTED] account. No one ever saw the Complainant fall down, roll on the ground or stumbling. No one else recalled the group calling out "no, [REDACTED] no" much less chanting that phrase in unison. [REDACTED] was with the group of students including myself, the Complainant and [REDACTED] during the time that [REDACTED]

alleges that she and the group of people were chanting “no, [REDACTED] no”. He specifically was asked if he recalled [REDACTED] or the group chanting “no, [REDACTED] no” and he was clear that he does not remember anyone saying or chanting those words. Contrary to [REDACTED] claim, [REDACTED] does not recall such conduct in her statement.

OCR’s Sexual Harassment Guide recommends evaluating the “relative credibility” of evidence by looking at the level of detail and consistency of each person’s account ... in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist.” *Id.*, p. 9. [REDACTED] testimony is not corroborated and lacks relative credibility.

Courts are now hearing cases brought by students such as myself who have been accused of sexual misconduct and who have been found responsible in proceedings which, like Carleton’s, lack the proper due process. Courts have established that Title IX liability can occur when students accused of sexual misconduct are prohibited from questioning their accused and/or witnesses. ((*Doe v. Salisbury*, 2015 WL 5005811, *13)(discussing concerns with a university’s denial of plaintiffs’ ability to ask witnesses particular questions); *Univ. of Mass.-Amherst*, 2015 WL 4306521, *8 (finding “limits placed on [the plaintiffs] ability to cross-examine witnesses” in conjunction with other procedural flaws was “sufficient to raise at least some questions about the outcome of his disciplinary proceeding”); *Brandeis*, 2016 U.S. Dist. Lexis 43499, *13-14 (discussing a lack of cross-examination in a university disciplinary hearing as follows: [h]ere, there were essentially no third-party witnesses to any of the events in question, and there does not appear to have been any contemporary corroborating evidence. The entire investigation thus turned on the credibility of the accuser and the accused. Under the circumstances, the lack of an opportunity for cross-examination may have had a very substantial effect on the fairness of the proceeding.”).

The credibility of the parties in cases involving allegations of sexual misconduct is always of paramount importance. This is even more important as usually these disputes depend on the memory of individuals who have consumed large amounts of alcohol. In the case *Winnick v. Manning*, 460 F.2d 545 (2d Cir.1972), the United States Court of Appeals for the Second Circuit held that the right of cross-examination is “essential to a fair hearing” and especially so in cases where there are questions involving the credibility of witnesses and the Complainant. In the more recent case of *Furey v. Temple University*, 884 F.Supp 2d (E.D. Pa. 2012), the Court held that “due process require[s] that the plaintiff be able to cross-examine witnesses” in cases where an accuser’s testimony might be determinative, serving as “an important safeguard” because the “purpose of cross- examination is to ensure that issues of credibility and truthfulness are made clear to the decision makers.”

Likewise, in *Donohue v. Baker*, 976 F.Supp 136 (D.C. NDNY 1997), the Court noted the particular importance of cross-examination in campus sexual assault hearings, finding that “due process required” that a student accused of sexual assault be allowed to “direct questions to his accuser.” (*Doe v. Brandeis Univ.*, No. 15-11557, 2016 U.S. Dist. Lexis 43499, (D. Mass. Mar. 31, 2016); *Doe v. Middlebury Coll.*, No.1:15-cv-192, 2015 U.S Dist. Lexis 124540, *11-12 (D. Vt. Sept. 16, 2015)(granting a male student’s motion for preliminary injunction based on breach of contract and/or Title IX because plaintiff “demonstrated sufficiently serious questions . . . [regarding] breached duties . . . [during] instituting and prosecuting [of] investigation. . . .”);

Salisbury, 2015 U.S. Dist. LEXIS 110772, *23-27 (refusing to dismiss negligence and Title IX claims – pled in the alternative - against a university that violated the rights of male students disciplined for allegedly sexual misconduct); *Univ. of the South*, 2011 U.S. Dist. LEXIS 35166, *47-55 (rejecting a university’s motion for *summary judgment* to dismiss male student’s contract and quasi-contract claims based on violations of university policies occurring during a sexual misconduct investigation); *Dempsey v. Bucknell Univ.*, No. 4:11-cv-1679, 2012 U.S. Dist. LEXIS 62043, *18-*19 (M.D. Pa. May 3, 2012)(finding valid breach of contract claim when “Defendant Bucknell withheld *some relevant* information that [a plaintiff’s] attorney requested” when the handbook required “Bucknell . . . provide an accused with a copy of the charges against him, along with supporting information”).

d. Complainant’s reference before the CBSM panel to a second report introduced fatal bias to the process

During the hearing before the CBSM panel the Complainant advised the panel that she knew that there had been a second allegation, submitted via a community concern form, that I had committed additional acts of sexual misconduct. She made this comment to support her theory that I was a dangerous person to have on the Carleton College campus. I have never committed an act of sexual misconduct at any time. Allegedly, while I have still been given no information regarding such a second allegation, this allegation of misconduct occurred after April 28th. I can state, without any reservation, that I was rarely on campus after the allegation was made by the Complainant in this matter and could not have committed any misconduct.

The Complainant made the reference to the second report, which came as a complete and utter shock to me, in support of her statement that I have a history of “predatory behavior”. Such a claim is completely unfounded, totally false, and inflammatory. The use of the unfounded second report, the allegation with no support whatsoever that I have a history of “predatory behavior” was a deliberate and malicious ploy to prejudice the CBSM Panel against me. It is very hard for me to understand why anyone would set out to destroy my reputation and drive me out of Carleton. Equally troubling is the Complainant’s introduction of what is clearly a false allegation, which according to the Interim Title IX Coordinator Amy Sillanpa has not been investigated. I was completely shocked to hear that there was another false report made against me. Until that moment I was given not notice that there was a second complaint and to this day I have been given no information or details regarding the second report. I assume that it was clearly a deliberate attempt to destroy my credibility and was determined to be completely baseless.

e. Presumption of Innocence and Reasonable Person Standard

Furthermore, any accused student must be presumed innocent until proven otherwise. The preponderance of the evidence standard is the very lowest possible standard used to determine responsibility, but even the lowest standard still requires that I be presumed innocent until proven guilty. Clearly the hearing panel committed a procedural error that had a substantial impact on the final decision when they did not provide me the presumption of innocence.

In addition, the rules require that my conduct be judged based upon the “reasonable person” standard. As articulated by the *The 2017 NCHERM Whitepaper – Due Process and the Sex*

Police, The NCHERM Group (2017) the OCR has established that the reasonable person standard that is to be applied in sexual misconduct proceedings is that of a reasonable student in the respective college community, in the same or similar circumstances. What is a reasonable person in any given situation is highly contextual. (NCHERM Whitepaper. at Page 10). My conduct must be judged against a reasonable person standard that is unique and particular to the situation of April 28, using as the reasonable person a highly intoxicated young adult, who had never met the Complainant before and had no true knowledge of the alcohol she had consumed as well as her normal behavior, and her relative mental state. Based upon the below witness observations, I had no reason to believe that the Complainant was not able to consent to sexual conduct due to incapacitation.

The inescapable fact is that I am the only party able to provide any testimony regarding the events that transpired on the morning of April 28th, between the Complainant and me, in my dorm room. The Complainant's testimony is that she has no real recollection of the events in my dorm room. Furthermore, by her own testimony "she remembers some of the conversation at the bonfire, the last stop, but then she blacked out and does not remember anything else". (Investigative Report, page 3).

A review of the excerpted witness statements that are provided in the Investigative report reveals that the Complainant was walking, talking, laughing and engaging coherently with other people the entire time at the bonfire and at all times thereafter. While she uses the term blackout to indicate her condition at the bonfire and thereafter, the witnesses clearly did not observe any conduct that would have led them to believe she was not able to control her actions or retain ability to make informed decisions. She consumed no additional alcohol as well so her level of intoxication would not have increased from the time she was at the bonfire.

Her level of intoxication was **not** considered notable among the group of participants. It is important to understand that the below observations of the Complainant are all from the time spent at the bonfire to the end of the night. While there were observations that she was drunk, as were all the participants, she was perceived by the other participants to be in control of her faculties, able to converse coherently and acting in a similar manner as the other participants that evening.

The below observations of the Complainants behavior are all from the last stop on the "scavenger hunt" that night. At this point all of the alcohol had been consumed and the drinking had ended. There is no indication that the Complainant consumed any more alcohol at all that night. It is also very important to note that while the witnesses describe the Complainant as laughing, and carrying on conversations involving detailed memories of events from two years prior, the Complainant claims that she was experiencing blackout at that time.

- [REDACTED] – "[REDACTED] seemed relatively drunk during the walk towards [REDACTED]. All of the students new to the group were drunk." (Page 11)
- [REDACTED] – "he did not track on how much [REDACTED] was drinking or what condition she was in...He said that at [REDACTED] was standing, but does not remember if she was coherent."

- [REDACTED] – “She has no clear image of how drunk [REDACTED] was, and she had no reason to be paying particular attention to [REDACTED]. Some people in the group were vomiting and were taken home and taken care of. She does not remember [REDACTED] vomiting, and she did not see who [REDACTED] left with.”
- [REDACTED] – Regarding [REDACTED] told me that she may have met her earlier in the evening. She does not remember seeing [REDACTED] and [REDACTED] together. She did not communicate with [REDACTED]. She did not have any observations of [REDACTED] towards the end of the evening.”
- [REDACTED] – She said she was not really with [REDACTED] during the night, just in the group as a whole. She remembers talking to [REDACTED] at the beginning about coming to the event, before any drinking started...She said everyone got very drunk, but **nothing stood out about how drunk [REDACTED] was.**”
- [REDACTED] – [REDACTED] told me he did not interact with [REDACTED] most of the night of April 28. **He remembers having a conversation with her at the [REDACTED] which was fairly late in the night. They talked about the event, e.g. the nature of the scavenger hunt. [REDACTED] said he could tell [REDACTED] was intoxicated at that point, but she was able to converse, and she was asking questions. He does not remember observing [REDACTED] walking, but told me he could tell from her speech pattern that she was drunk. But she was not slouching, and she was laughing and smiling.. [REDACTED] told me he could not say how much [REDACTED] drank over the course of the night because his role was watching how people were doing and getting them to the next stop.**”
- [REDACTED] – He also told me that he clearly remembers that at the bonfire, there was a bottle of Hot 100, which is 100 proof alcohol. The bottle was passed around, and [REDACTED] finished it. He is not sure how much was left at that point or how much she consumed. He does remember that people cheered her as she finished it. **That was the end of the drinking for the night. [REDACTED] told me that at that stop (the bonfire), [REDACTED] was “pretty good” – that is, in control of her faculties. He did not converse with her, but she seemed “cognizant”, and he observed her talking to others.**”
- [REDACTED] – [REDACTED] told me that he does not remembering seeing either [REDACTED] or [REDACTED] much over the course of the night **until the bonfire at the [REDACTED] and neither’s behavior stood out. At the bonfire, [REDACTED] had a conversation with [REDACTED] in which she was talking about their freshman year and recalling information about others on their floor. [REDACTED] told me that she was able to converse about specific details during that conversation. [REDACTED] told me that after the bonfire, he was walking near [REDACTED] and [REDACTED]. He told me that they were both intoxicated, and they were walking with their arms around each other’s shoulders. They were chatting. They were not walking in a perfect line and were providing each other some support. But they seemed able to walk fine and neither stumbled or fell.**”

It is important to remember that intoxication does not mean that a person cannot consent to sexual contact. If that was the standard to apply when determining ability to consent nearly all sexual contact, on any given weekend on any college campus, would be, by definition, nonconsensual. The Complainant was intoxicated, as were all the participants that night including myself, but she was able to understand her actions and express her consent to sexual

contact. She, in fact, initiated the sexual contact that night and did repeatedly express her continued consent. That the Complainant knew that she was entering [REDACTED] and that she was intending to “hook-up” is also clear from a review of the Security Report dated April 28, 2017 (Document 3, Page 2, attached to the Sexual Misconduct Investigation Report). In that report she was questioned by both Area Director Taylor Morgan and Security Officer Steven Hanson about her presence in [REDACTED]. The report states she “indicated she may have wanted to hook up with someone in [REDACTED].”

That both the Complainant and I were intoxicated is not in dispute. That we engaged in sexual contact is not in dispute. I see no reason to doubt the Complainant’s report that she has no recall of the events after the bonfire that night as she experienced a blackout. In fact, I reached out to the Complainant to make sure she obtained the clothing she left in my dorm room and her One Card. When she asked if we had had sex that night I told her we had. I had no reason to hide the fact that we had had sex because she had initiated sex and had been very aware of what she was doing when we were having sex. She was very active during sex and very vocal in her consent. There is no reason to doubt my credibility based upon my actions and testimony.

2. The existence of relevant new information not available at the time of the resolution hearing has been discovered which would have had a substantial affect on the Panel’s decision.

One of the grounds for an appeal of the finding of the CBSM Panel is that there exists, or has been discovered, relevant new information which was not presented or available to the CBSM Panel at the time of the hearing. I have discovered that there is additional information which was not made available to the CBSM Panel.

a. The Discovery of additional messages within the Group Message Chain that were deliberately withheld from the CBSM Panel.

At the end of the day on April 28th I was added by the members of [REDACTED] to the group message. As a member of the messaging group now I am able to view the complete communication chain from that night. The group message, as submitted by the Investigator to the CBSM Panel, is incomplete and has deliberately omitted important messages. This makes me wonder what other parts of witness statements have been omitted because they did not support the conclusion that the investigator wanted to reach in her report. It is exactly because of this concern that the OCR directs that the accused party be given the full investigative file. Anything less constitutes bias and deceptive handling of the investigation. Any decision reached by the CBSM Panel is the result in part of the biased investigation and resulting report. (See attached copies of messages and photos omitted by the Investigator).

One of the very important messages which was omitted by the investigator included a group photo of several of the participants on the night of April 28th. It is important to note that the photograph of the message was taken by me and my phone carried a time stamp on the message and photo of 03:17 AM. As I am currently in Seattle my phone has converted all times to Pacific time so the actual time that the photo was taken and the message sent would have been 05:17

AM on April 28th. This photo clearly depicts the following participants (from lower left hand corner in a clockwise pattern) [REDACTED] unknown female member of [REDACTED] not an initiate, [REDACTED] (See Photo attached hereto).

This group photo is important new evidence that was not provided to the CBSM panel because it clearly shows [REDACTED] state of mind a mere 15 minutes after she alleges that she feared for the safety of her new friend, the Complainant, because she had left with me and was going to my dorm room. This new evidence shows that her testimony where she claims to have been very concerned for the Complainant's safety is simply not credible. Five of the seven individuals in the group photo were current [REDACTED] members and had spent the night watching over the participants and new initiates. No one indicates that [REDACTED] was concerned for the Complainant, asked for assistance with guaranteeing the Complainant's safety or checking on her. The photo makes it clear that if [REDACTED] had **really** been concerned about the Complainant, she had at her disposal many people who would have been very eager to assist her with making sure that the Complainant was safe. This new evidence seriously undermines the credibility of [REDACTED] testimony.

b. The CBSM Panel did not have all of the relevant information pertaining to my intoxication and the relative incapacitation of the parties.

The Hearing Panel's decision that a violation occurred did not take into account my level of intoxication which led to a biased application of the incapacitation standard. The Complainant has stated that she has no recollection of any events after leaving the bonfire, with the exception of a few flashes of my body. Even though very intoxicated, I do recall the events clearly and do recall that she was very definitely consenting to sexual intercourse. She not only initiated all contact, she advised me she was on birth control, requested that I use a condom, got on top of me and placed my penis in her vagina.

If the Complainant was not able to provide consent for the sexual activity which she initiated, and then freely gave consent to, because of intoxication then I would also have been too intoxicated to have given consent. No action has been brought against the Complainant for her engaging in sexual conduct with me when I was in a highly intoxicated state. Clearly there can be only one reason why I have been charged with violating the sexual misconduct policy and that reason would be because I am a male.

The Carleton College Policy against Sexual Misconduct defines incapacitation as "the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. For example, a person may be incapacitated when asleep or under the influence of alcohol or drugs to an extent that the person is not capable of making a knowing decision." (Page 3). Under this definition of incapacitation I could be viewed as incapacitated and therefore could not consent to engage in sexual conduct. It is completely biased to hold a male student who was just as incapacitated by extreme alcohol intoxication to a higher standard than a female student.

I was as intoxicated as the complainant, if not more so, and therefore I have also been disproportionately disciplined for sexual conduct because I am male. The stated reason for

finding me responsible for sexual misconduct was the intoxication level of the Complainant which the hearing panel ruled voided her ability to consent. The most prominent group that trains colleges on the proper policies and administration of Title IX policies is the Association of Title IX Administrators (“ATIXA”) which published a “Tip of the Week” that addressed how universities should adjudicate sexual misconduct allegations involving alcohol. (<https://atixa.org/members/tip-of-the-week/>) This “Tip” explained how five colleges “got it completely wrong” in finding male students responsible for “hook-ups” when alcohol was involved. ATIXA also noted in this “Tip”:

“A common policy problem comes from failing to distinguish between intoxicated and incapacitated. Yet, the most serious issue comes from failing to implement a *mens rea*, if you will, within the definition. Certainly, criminal concepts like *mens rea* are not strictly applicable to the campus conduct process, *but if we agree as I stated above that having sex with a willing, yet intoxicated person is not an offense, there must be something that the respondent does, beyond having sex, that makes a lawful act (sex) into a policy violation . . . there has to be something more than an intent to have sex to make this an offense. Otherwise, men are simply being punished for having sex, which is gender discrimination under Title IX, because their partners are having sex too and are not being subject to the code of conduct for doing so. Without a knowledge standard, a respondent will suffer an arbitrary and capricious application of the college’s rules.*”

The events of the morning of April 28th are now well known. Both the Complainant and I were among the group of initiates encouraged to consume large quantities of alcohol. It is not disputed that the Complainant was intoxicated by the end of the night. What has not been discussed, or even considered, is the level of my intoxication. I recall that I consumed at least eleven (11) alcohol drinks between the hours of 2 AM and 5 AM. My memory is that I drank:

- **4 cans of Beer**
- **4 glasses of wine**
- **11 shots of hard liquor including White Rum, Fireball and Hot 100.**

Using a standard formula for the predicted Blood Alcohol Content (BAC), which takes into account the type of alcohol, time lapse, age and weight of the individual I estimate that my BAC at 5AM would have been approximately .31. (see attached blood alcohol calculations). The chart attached to the BAC calculation indicates that an individual with a BAC of .31 would be confused, nauseated, blackout and with poor mentation.

In addition, the witnesses referenced in the investigative report mention that they could tell I was very intoxicated. Both [REDACTED] and [REDACTED] specifically refer to my intoxication. I was as intoxicated, if not more intoxicated, than the Complainant.

The Complainant indicates that she was too intoxicated and cannot remember the events of the night after the group left the bonfire. I, while admittedly extremely intoxicated, do remember the events of the evening including the fact that the Complainant not only consented to sexual contact, but in fact initiated the sexual contact, even going so far as to do the following:

- Remove all of her own clothing;
- Advise me that she was on birth control pills;
- Request that I get a condom;
- Remove and discard her tampon;
- Verbally consent more than two (2) times to the sexual contact;
- Get on top of me and insert my penis into her vagina; and most importantly
- When I was unable to maintain an erection due to my intoxication, she vigorously stroked my penis to restore the erection.

c. Misunderstanding by the CBSM Hearing Panel of the meaning of “Blackout Drunk”

The Complainant indicates that she was not able to consent to our sexual contact as she was “blackout” drunk. I believe that the use of this terminology was confusing to the hearing panel. While she was intoxicated, as was I, she was able to express herself, was very active and insistent about engaging in sexual contact with me. It is very important to understand that I had never met the Complainant before that night and in fact did not really meet or speak with her until she approached me at the last stop of the night which was the bonfire. By the time I met the Complainant, all the alcohol had already been consumed and I never provided any alcohol to the Complainant and never encouraged her to drink. As I did not know the Complainant, I was not able to assess her level of intoxication. I did not know her normal behaviors or demeanor and would not have known if her behavior was unusual.

I have provided an authoritative study from the National Institute of Health – National Institute on Alcohol Abuse and Alcoholism which defines and explains an alcohol induced blackout. (See *What Happened? Alcohol, Memory Blackouts, and the Brain*, White, Aaron M., NIH – National Institute on Alcohol Abuse and Alcoholism, July 2004). This paper defines and explains what happens when an individual who has consumed large quantities of alcohol experiences a black-out. Essentially a black-out occurs when:

“[a]lcohol primarily disrupts the ability to form new long-term memories; it causes less disruption of recall of previously established long-term memories or of the ability to keep new information active in short-term memory for a few seconds or more....As the amount of alcohol consumed increases, so does the magnitude of the memory impairments. Large quantities of alcohol, particularly if consumed rapidly, can produce a blackout, an interval of time for which the intoxicated person cannot recall key details of events, or even entire events. En bloc blackouts are stretches of time for which the person has no memory whatsoever... Blackouts are much more common among social drinkers than previously assumed”. (Id. at Page 6).

The crucial issue which I believe confused the hearing panel, when assessing the impact of the Complainant's alleged blackout episode on the issue of ability to consent to sexual contact, is that the Complainant was fully conscious, talking coherently and completely clear in her consent to the sexual activity. As the above study explains and documents, individuals who experience blackouts "can often carry on conversations, drive automobiles, and engage in other complicated behaviors. Information pertaining to these events is simply not transferred into long-term storage. Ryback (1970) wrote that intoxicated subjects in one of his studies 'could carry on conversations during the amnesic state, but could not remember what they said or did 5 minutes earlier. Their immediate and remote memory were intact'. (Id. at page 2).

Recently NCHERM, governing body for ATIXA, issued a whitepaper on the issue of Title IX and sexual misconduct policies on college campuses. They specifically addressed the issues of consent and stated:

Our consent rules need to be malleable to account for the vagaries of the human experience, and we need to be flexible enough to allow for the fact that human communication and interaction are imperfect. Late adolescence can teach people how to become sexual beings, but we can't expect that students arrive at college fully equipped to think and act as mature, respectful sexual partners. They will fumble a bit. They will fail to make each sexual interaction ideal. They will not live up to our standards or theirs. So, should we discipline them for that developmental failure? We should impose our discipline for abusive transgressions, those actions according to OCR that have a discriminatory effect on the basis of sex or gender. Rudeness, insensitivity to one's partner, having underdeveloped communication skills – these are behaviors that need to be corrected by appropriate intervention – but only the sex police believe they need to be disciplined. *The 2017 NCHERM Whitepaper – Due Process and the Sex Police*, The NCHERM Group.

I have no reason to doubt that the Complainant is being truthful when she relates that she does not recall the events of April 28 after the bonfire and even including the time in my dorm room. I have no reason to doubt her contention that she was in a blackout. Nonetheless, I could not have known that she was in a blackout. She may have no memory of initiating sexual contact with me, giving her consent, and insisting that we continue to have sex, even when I was not able to perform and just wanted to sleep, but she did in fact do all of the foregoing and I did not commit sexual misconduct under the terms of the policy.

3. The sanction is inconsistent with the seriousness of the offense.

I acknowledge that I engaged in the consumption of alcohol even though I have not yet reached the legal drinking age. I also acknowledge that I drank an excessive amount of alcohol during the events of April 28 and the initiation into the [REDACTED] group. I did not sexually assault the Complainant and she was adamant in her consent and insistence in having sexual contact. I should not be sanctioned for sexual assault of the Complainant. I understand that those students who organized the event and provided the alcohol that night have appealed their sanctions and that they have had their suspensions reduced to community service. I am asking that my

suspension be reduced and that I be sanctioned in a manner that does not delay or destroy my ability to complete my education.

Suspension from college for a year is an extremely harsh and life-altering penalty that is not merited by my conduct on April 28. The events during the morning of April 28 were consensual and what would commonly be referred to as a hook-up. While I had never before engaged in a hook-up, and never plan to engage in one again, the penalty for such an act should never be to have one party suspended from college for any significant amount of time or deprived of the right to further their education.

Such a sanction is clearly an extremely harsh punishment. The Court in the case of *King v. DePauw University* (2014), issued a preliminary injunction preventing DePauw University from suspending a male student found guilty of sexual assault. The court's awareness of the life-altering impact of a guilty finding is noteworthy. The Court found that King had demonstrated that he would suffer irreparable harm if an injunction was not entered. The court stated that if King was not permitted to complete the semester he would forever have either a gap or a senior-year transfer on his record. The Court found it inevitable that he would be asked to explain either situation by future employers or graduate school admissions committees, which would require him to reveal that he was found guilty of sexual misconduct. Successfully seeing this lawsuit to *its conclusion could not erase the gap or the transfer; the question would still be raised, and any explanation is unlikely to fully erase the stigma associated with such a finding. Money damages would not provide an adequate remedy at that point; the school's erroneous disciplinary finding—even if determined to have been arbitrary or made in bad faith—would continue to affect him in a very concrete way, likely for years to come.*

Unfortunately, false sexual assault allegations on college campuses are far more prevalent than many imagine. For instance, academics conducting a research study found approximately 50% of sexual assault allegations at two Midwestern American colleges were false. See, Eugene J. Kanin, False Rape Allegations Archives of Sexual Behavior, Vol. 23 No. 1 (1994) available <https://archive.org/details/FalseRapeAllegations>). Another academic paper exposed the lack of objective proof behind a "consensus among legal academics that only two percent" of sexual assault allegations are false. See, Edward Greer, The Truth behind Legal Dominance Feminism's Two-Percent False Rape Claim Figure, 33 Loy. L.A.L. Rev. 947(2000); available <http://digitalcommon.lmu.edu/llr/vol33/iss3/3>).

I respectfully suggest that I should not be penalized for any of my actions on April 28. I did not create the situation that arose that night involving the excessive amounts of alcohol consumed by the participants. I acknowledge participating in the planned events that evening and I am respectfully asking that the sanctions against me be reduced so that they do not result in the destruction of my ability to obtain an education or of branding me as a rapist.

Conclusion

While I wholeheartedly embrace efforts to eliminate sexual misconduct on college campuses, the evidence as detailed above demonstrates that I did not engage in sexual contact with the Complainant without her consent. Carleton's policy provides that the Hearing Panel's erroneous

finding can be reversed if: (a) my rights under Carleton's "procedures" were violated; (b) "new evidence" warrants a reversal; or (c) the Hearing Panel imposed an inappropriate "sanction."

As I have demonstrated, the procedural errors, misunderstanding of the impact of blackout, severity of the sanction in light of the totality of the circumstances are sufficiently severe to warrant the reversal of the Hearing Board's erroneous decision. I wish that the night of April 28th had never happened. I found myself, as did the other initiates, in a situation not of my own making and where I was encouraged to drink dangerous amounts of alcohol. This was followed by the interactions with the Complainant which I neither sought out nor really wanted. While I do know that "hook-up sex" is considered common-place by my generation, I had never before engaged in that behavior and will never again.

I had been in a long-term committed relationship with another student at Carleton which had recently ended amicably. In fact, my former girlfriend remains one of my closest friends and has been an amazing support for me since all of this happened. She is shocked that anyone could ever think that I would ever attempt to have sexual contact with anyone without their clear consent because she knows the person I am and how much respect I have for women. Many of my closest friends are women, including Carleton students. By way of example, I lived with the family of one of my very good friends [REDACTED] during the winter break while I was working at an internship.

The events of April 28th are not at all an indication of my character. I have been an active advocate for sexual assault prevention and even elected to take the intensive two-day Green Dot training. I choose to take the training because I believe it is really important to uphold the Carleton standards and be a leader on campus. I want to make every Carleton student feel safe and valued.

Since coming to Minnesota from Seattle to attend Carleton College I have built many deep and lasting relationships at Carleton. I view my Carleton friends, and their families, as my second family. I do not want to see these relationships destroyed. I also have been active in the larger Northfield community since I came to Minnesota from Seattle. I have coached youth lacrosse in the community and have enjoyed working with the young players at the youth association level.

When I graduate I will be the first person in my family to gain a college degree. My family and I were elated when I was admitted to Carleton and I am only able to attend Carleton due to the need-based scholarship I was awarded by Carleton. Any suspension of my education will make it nearly impossible for me to graduate from college, and definitely from Carleton, as I do not have the option of deferring my education for the term of the suspension. Suspension to me essentially equals expulsion and will effectively destroy my future aspirations.

I truly love my Carleton community and I have done everything I could do to be a model student. I have never been forceful with any women. It is just not who I am. Therefore, I now must put my trust in you and ask that you will review all the evidence, find me not responsible, and allow me to begin rebuilding my life.

Respectfully Submitted,

[REDACTED]

Carleton

VICE PRESIDENT FOR STUDENT LIFE & DEAN OF STUDENTS

clivingston@carleton.edu

507.222.4248

June 19, 2017

Via Email: [REDACTED]

Dear [REDACTED]

I have carefully reviewed the materials relating to the appeals of the Community Board of Sexual Misconduct's (CBSM) May 31, 2017 decision. As you know, the CBSM found that you violated Carleton's Sexual Misconduct Policy and issued a sanction of: (1) a three-term suspension; (2) mandated education; and, (3) no contact with [REDACTED] during the remainder of her enrollment at Carleton.

You appealed the CBSM's decision on the basis of: (1) procedural errors; (2) the existence of relevant new information not available at the time of the hearing that would have substantially affected the decision; and (3) a sanction inconsistent with the seriousness of the offense. [REDACTED] also appealed the decision on the grounds that the sanction is inconsistent with the seriousness of the offense.

After careful review of the record, I find that there were no procedural errors that substantially impacted the final decision. In fact, certain errors you allege, such as the lack of an opportunity to cross-examine the complainant, are inconsistent with both Carleton's policy and the Office of Civil Rights guidance. In addition, I find that the alleged new information noted in your appeal was available at the time of the hearing and/or would not have substantially affected the CBSM's decision.

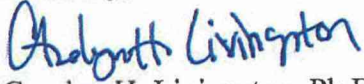
Finally, I have concluded that the sanction issued by the CBSM does not match the seriousness of the offense and am amending the decision of the panel. I have decided that you will be expelled from Carleton. This decision is based on several factors, including compelling video evidence that shows [REDACTED] was clearly incapacitated. The fact that you continue to assert that it was acceptable to engage in sexual activity with a person in [REDACTED] condition is deeply troubling and shows that your continued attendance at Carleton would pose a danger to not only to her, but other members of the community as well.



CH

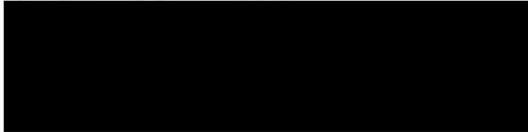
Under Carleton's Student Sexual Misconduct Resolution Process, this decision is the final institutional response and may not be appealed.

Sincerely,



Carolyn H. Livingston, Ph.D.
Vice President for Student Life and Dean of Students

CC: Amy Sillanpa, Acting Title IX Coordinator



The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

John Doe

(b) County of Residence of First Listed Plaintiff State of Washington
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Beau D. McGraw, McGraw Law Firm, P.A.
10390 39th Street North, Suite 3
Lake Elmo, MN 55042
Telephone: 651-209-3200

DEFENDANTS

Carleton College
One North College Street
Northfield, MN 55057

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify) _____
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title IX of the Education Amendments of 1972, 20 U.S.C. Sections 1681-1688
Brief description of cause:
Title IX of the Education Amendments of 1972, 20 U.S.C. Sections 1681-1688

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 75,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 07/17/2019
SIGNATURE OF ATTORNEY OF RECORD /s/Beau D. McGraw

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____